2512

SUPREME COURT OF THE UNITED STATES.

No. 139.

ANN R. DERMOTT, PL'FF IN ERROR,

vs.

ZEPHENIAH JONES.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF COLUMBIA.

INDEX.

	Original.	Print.
Writ of error	1	1
Citation	2	1
Appeal bond, copy of	3	2
Style of court	5	3
Parties	5	3
Capias ad respondendum	8	3
Alias capias	8	4
Marshal's return and def't's appearance	9	4
Rule nar	9	4
Order that pl'ff elect between the suit at law and bill in chancery	11	5
Nar	13	6
Rule bill of particulars	15	7
Bill of particulars	18	7
Rule plea	21	9
Second order on pl'ff to elect, &c	24	9
Pl'ff's election	25	10
Bill in equity dismissed, quo ad the $5,000	25	10
Pleas by def't	28	10
Amended nar	44	16
Bill particulars referred to in 4th count of amended nar	64	19
Rule plea to amended nar	72	22
Objections to reception of amended nar	72	22
Oyer of articles of agreement 1st and 2d counts amended nar	72	23
Oyer of writ craved	73	23
" " refused	74	23

GIDEON, print.

	Original.	Print.
Motion to quash original writ	74	24
Oyer of articles of agreement granted, and rule plea extended	76	24
Pleas to amended nar	76	25
Demurrer to 2d count amended nar	80	26
" " 3d and 4th counts amended nar	84	27
" " 3d plea to 1st count amended nar	88	28
Joinder to def't's demurrer to 2d, 3d and 4th counts amended nar	90	29
Joinder to pl'ff's demurrer to 3d plea to 1st count amended nar	90	29
Venire facias	91	29
Motion by pl'ff for judgment on his demurrer to 3d plea	92	30
" " " def't's demurrers	92	30
Jury	96	31
Verdict on 1st count	96	31
Inquisition on 4th count	97	31
" " 3d "	98	32
" " 2d "	99	33
Judgment	100	33
Memorandum	102	33
Def't's 1st bill of exceptions	102	34
" 2d " "	116	39
" 3d " "	118	39
Defendant's 4th prayer	121	40
" 5th "	121	41
" 2d "	122	41
" 1st and 3d prayers, with qualification	124	42
Articles of agreement	132	43
Specifications, or Schedule A	137	46
Writ of error produced	180	63
Clerk's certificate and seal	181	64

2573

Writ of Error.

UNITED STATES OF AMERICA, *ss.*

The President of the United States to the Judges of the Circuit Court of the District of Columbia, sitting for the county of Washington, greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea, which is in the said court before you, or some of you, between Zepheniah Jones, plaintiff, and Ann R. Dermott, defendant, a manifest error hath happened, to the great damage of the said defendant, as by her complaint appears: We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that under your seal, distinctly and openly, you send the records and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the first Monday of December next, in the said Supreme Court, to be then and there held, and that the records and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, which of right, and according to the laws and custom of the United States, should be done.

Witness the Hon. Roger B. Taney, Chief Justice of the said Supreme Court.

Issued this 30th day of Nov., 1857.

JNO. A. SMITH,
Clerk Circ't Ct. Wash'n Co., Dist. of Col'a.

Filed 30th November, 1857.

Citation.

DISTRICT OF COLUMBIA, *to wit:*

The United States of America to Zepheniah Jones, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington on the first Monday of December next, pursuant to a writ of error filed in the circuit court of the District of Columbia for the county of Washington, wherein Ann R. Dermott is plaintiff in error and you are defendant in error, to show cause, if any there be, why judgment rendered against the said Ann R. Dermott, in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in this behalf.

Witness the Hon. James Dunlop, chief judge of the circuit court of the District of Columbia, the 30th day of November, 1857.

JAS. DUNLOP.

Served a copy of the within sum's on pl'ff's att'y, this 30th of Nov., 1857.

J. D. HOOVER,
Marshall.

Copy of Appeal Bond.

Know all men by these presents, that we, Ann R. Dermott, William J. McDonald, and Andrew Noerr are held and firmly bound unto Zepheniah Jones, in the full and just sum of seventeen thousand dollars, lawful money, to which payment well and truly to be made and done we bind ourselves, and each of us, our and each of our heirs, executors and administrators, jointly and severally, firmly by these presents. Sealed with our seals and dated this twenty-eighth day of November, 1857.

Whereas lately, at a circuit court of the District of Columbia, sitting for the county of Washington, in a suit pending in the said court, wherein the said Zepheniah Jones was plaintiff and the said Ann R. Dermott was defendant, judgment was rendered against the said defendant; and she having obtained a wit of error, and filed a copy thereof in the clerk's office of the said circuit court, to reverse the judgment in the aforesaid suit, and citation directed to the said Zepheniah Jones, citing and admonishing him to be and appear at a Supreme Court of the United States, to be holden at Washington on the first Monday of December next:

Now the condition of the above obligation is such, that if the said Ann R. Dermott do and shall prosecute her said writ to effect, and answer all damages and costs if she fails to make her plea good, then the above obligation to be null and void, otherwise to be and remain in full force and virtue in law.

ANN R. DERMOTT, [SEAL.]
W. J. McDONALD, [SEAL.]
A. NOERR. [SEAL.]

Signed, sealed, and delivered in presence of—
JOHN CARROLL BRENT,
WILLIAM NOERR.

I hereby certify that from my knowledge of the property of Wil- J. McDonald and Andrew Noerr, sureties in the foregoing appeal bond, I believe to be ample.

JOHN CARROLL BRENT.

Approved by the court.

True copy.

Test: JNO. A. SMITH, *Cl'k.*

2514
3

Style of Court.

DISTRICT OF COLUMBIA, *to wit:*

At a circuit court of the District of Columbia, begun and held in and for the county of Washington, at the city of Washington, on the third Monday of October, being the nineteenth day of the same month, in the year eighteen hundred and fifty-seven, and of the independence of the United States the eighty-second.

Present, James Dunlop, chief judge; the Hon'ble James S. Morsell and Wm. M. Merrick, ass't judges; Jonah D. Hoover, esq., marshal.

JOHN A. SMITH, *Clerk.*

In the records of proceedings of said court, amongst others are the following, to wit:

Parties.

ZEPHENIAH JONES
vs.
ANN R. DERMOTT.

Be it remembered that heretofore, to wit, on the thirteenth day of July, in the year eighteen hundred and fifty-two, the said plaintiff, by Bradley & Carlisle, esqs., his attorneys, prosecuted and sued forth out of the circuit court here the United States writ of capias ad respondendum, directed to the marshal of the District of Columbia, in the words and of the tenor following, to wit:

Capias ad Resp'm.

DISTRICT OF COLUMBIA, *to wit:*

The United States of America to the Marshal of the District of Columbia, greeting:

You are hereby commanded to take the body of Ann R. Dermott, late of Washington county, if she shall be found within the county of Washington, in your said district, and her safely keep, so that you have her body before the circuit court of the district of Columbia, to be held for the county aforesaid, at the city of Washington, on the third Monday of October next, to answer unto Zepheniah Jones in a plea of debt, and so forth.

Hereof fail not at your peril, and have you then and there this writ.

Witness W. Cranch, esq., chief judge of our said court, in the city of Washington, the 22d day of May, anno Domini one thousand eight hundred and fifty-two.

Issued the 13th day of July, 1852.

JOHN A. SMITH, *Clk.*

BRADLEY & CARLISLE.

October Term, 1852.

At which mentioned third Monday of October, in the year eighteen hundred and fifty-two, and the day of the return of the foregoing writ, come again into the circuit court here the said plaintiff, by his attorneys aforesaid, and the marshal of the District of Columbia, to whom the said writ was in form aforesaid directed, makes return thereof to the court here, thus endorsed, to wit: "Non est."

R. WALLACH,
Marshal.

Thereupon, afterwards, to wit, on the nineteenth day of October, in the year eighteen hundred and fifty-two, the said plaintiff, by his attorneys aforesaid, prosecuted and sued forth out of the circuit court here an alias United States writ of capias ad respondendum, directed to the marshal of the District of Columbia, in the words and of the tenor following, to wit:

Alias Capias.

DISTRICT OF COLUMBIA, *to wit:*

The United States of America to the Marshal of the District of Columbia, greeting:

We command you that you summon Ann R. Dermott, late of Washington county, if she shall be found within the county of Washington, in your said district, and her safely keep, so that you have her body before the circuit court of the District of Columbia, to be held for the county of Washington, at the city of Washington, on the fourth Monday of March next, to answer unto Zephenia Jones in a plea of debt, and so forth.

Hereof fail not at your peril, and have you then and there this writ.

Witness W. Cranch, esquire, chief judge of our said court, at the city of Washington, the 18th day of October, anno Domini one thousand eight hundred and fifty-two.

Issued the 19th day of October, 1852.

JOHN A. SMITH, *Cl'k.*

BRADLEY & CARLISLE.

Marshal's Return and Defendant's appearance.—Rule nar.

March Term, 1853.

At which mentioned fourth Monday of March, in the year eighteen hundred and fifty-three, and the day of the return of the aforegoing writ, comes again into the circuit court here the said plaintiff, by his attorneys aforesaid, and the marshal of the district aforesaid, to whom the said aforegoing writ was in form

aforesaid directed, makes return thereof to the court here, thereon endorsed, to wit: "Summoned."

R. WALLACH,
Marshal.

And the said defendant being called, appears in court here, by John Carroll Brent, esq., her attorney; and thereupon, on motion of the said defendant by her attorney aforesaid, it is ruled by the court here that the said plaintiff declare against the said defendant in the plea aforesaid, or judgment by the court here will be entered against him in default thereof; and thereupon the said plaintiff, by his attorneys aforesaid, pray leave of the court here to imparle until the third Monday of October next, and then to declare against the said defendant in the plea aforesaid, and to him it is granted. The same day is given to the said defendant also.

Appearance and imparlance to March Term, 1854.

October Term, 1853.

At which said third Monday of October, in the year eighteen hundred and fifty-three, to which said day the said plaintiff had leave to imparle, and then to declare against the said defendant in the plea aforesaid, comes again into the circuit court here, as well the said plaintiff, by his attorneys aforesaid, as the said defendant, by her attorney aforesaid, and the said plaintiff, by his attorneys aforesaid, pray leave of the court here further to imparle until the fourth Monday of March next, and then to declare against the said defendant in the plea aforesaid, and to him it is granted. The same day is given to the said defendant also.

At which mentioned fourth Monday of March, in the year of our Lord one thousand eight hundred and fifty-four, to which said day the said defendant had leave to imparle, and then to answer the declaration aforesaid of the said plaintiff in the plea aforesaid, come again into the circuit court here, as well the said plaintiff, by his attorney aforesaid, as the said defendant, by her attorney aforesaid; whereupon, on motion of the said defendant, by her attorney aforesaid, the court made the following order, to wit:

Order that the def't elect between the suit at law and bill in Chancery, and dismiss either the suit at law, or so much of the bill in Ch'y as goes for the $5,000.

ZEPHENIA JONES vs. ANN R. DERMOTT. } 319.—Trials, Mar., 1854.

SAME vs. SAME. } No. 923.—Bill in Equity.

On motion of the defendant, ordered that the plaintiff elect, during

the present term of this court, between the said suit at common law and the said bill in chancery, and dismiss either the said suit at common law, or so much of the said bill in chancery as goes for the $5,000 and int. therein claimed, as payable by the terms of the contract under seal, exhibited with said bill on the 1st October, 1851.

By order of the court.

Test: JNO. A. SMITH, *Cl'k.*

Continuance to Oct. Term, 1854.

1st May, 1854.

Thereupon further process of and upon the premises aforesaid, between the parties aforesaid, by consent of the said parties, by their attorneys aforesaid, and by order of the court here the said cause is continued until the third Monday of October next.

Appearance and continuance to Mar. Term, 1855.

At which mentioned third Monday of October, in the year eighteen hundred and fifty-four, come again into the said court here, as well the said plaintiff, by his attorneys aforesaid, as the said defendant, by her attorney aforesaid; thereupon, further process of and upon the premises aforesaid, between the parties aforesaid, by consent of the said parties and their attorneys aforesaid, and by order of the court here the said cause is further continued until the fourth Monday of March next.

Appearance and continuance to October Term, 1855.

At which mentioned fourth Monday of March, in the year of our Lord one thousand eight hundred and fifty-five, comes again into the circuit court here, as well the said plaintiff, by his attorney aforesaid, as the said defendant, by her attorney aforesaid; thereupon, further process of and upon the premises aforesaid, between the parties aforesaid, by consent of the said parties and their attorneys aforesaid, and by order of the court here the said cause is further continued until the third Monday of October next.

At which mentioned third Monday of October, in the year of our Lord one thousand eight hundred and fifty-five, comes again into the circuit court here as well the said plaintiff, by his attorney aforesaid, as the said defendant, by her attorney aforesaid; and thereupon the said plaintiff, by his attorneys aforesaid, to wit, on the 25th January, 1856, declared against the said defendant in the plea aforesaid, in form following, to wit:

Nar.

DIRTRICT OF COLUMBIA,

Washington County, to wit:

Ann R. Dermott, spinster, was summoned to answer unto Zepheniah Jones, in a plea of debt.

Whereupon the said plaintiff, by Bradley and Carlisle, his attorneys, complain, for that whereas the said Ann R. Dermott, at the county aforesaid, on the first day of July, 1852, was indebted to the said Zepheniah Jones in the sum of five thousand for the price and value of certain work and labor done and materials furnished by the said Zepheniah to the said Ann R., and used and employed by her in and about the erection of certain buildings, and finishing and completing certain stores in said buildings, for said defendant, in the city of Washington, and county aforesaid, at her request.

And in a like sum of money, for so much money paid by the plaintiff for the use of the defendant, and at her request.

And in a like sum of money, for so much money had and received by the defendant for the use of the plaintiff.

And in a like sum of money by the said plaintiff paid, laid out, and expended, for the use of the defendant, and at her request.

Whereby and by reason whereof, and by reason of the non-payment thereof to the plaintiff on his request, an action hath accrued to the plaintiff to demand and have of the defendant the said sum of money above mentioned.

Yet the defendant has not paid the same, or any part thereof, although the same has been repeatedly demanded of her by the said plaintiff, to the damage of the plaintiff ten thousand dollars, and therefore he sues.

BRADLEY & CARLISLE,
Pl'ff's Att'ys.

Rule Bill of Particulars.

Whereupon, on motion of the said defendant, by her attorney aforesaid, it is ruled by the court here, that the said plaintiff file in this cause an account or bill of particulars.

And the said plaintiff, by his attorneys aforesaid, file in court here the following bill of particulars of work done, including the materials furnished, by Z. Jones, in the erection of Ann R. Dermott's house, at the corner of Market Space and 7th street west, up to the 1st day of October, 1851.

Bill Particulars.

1,478 cubic yds. excavation, *a* 20 c.....	$285 60	
223½ perches of stone foundation, *a* $3...	670 50	
549 $\frac{625}{100}$ brick work and materials, *a* $13	7,145 12	
738 sq. yds. stone paving, *a* 45 c.....	332 10	
333 yds. of brick paving, *a* 55 c.....	181 50	
169 feet, lineal, of moulded brick cornice, *a* 150 c.....	253 50	
		8,862 32
208 $\frac{3}{12}$ feet, lineal, granite curbstone, *a* 85 c.....	176 87	

148¾ feet, lineal, 8 x 12 granite coping, *a* 190 c.	281 67		
65 feet, lineal, granite water table, *a* 125 c.	81 25		
160 7/12 feet, lineal, granite window sills, *a* 63 c.	104 38		
386 feet, sup'l, granite stone sills, *a* 65 c.	240 90		
565 " lineal, of mantle heads and sills, *a* 100 c.	565 00		
3½ feet granite lintel, *a* 65 c., 2 27½; 2 plinth columns, 10 40	12 67½		
1 shop stone, 2 66; 2 gutters anti, 6 00	8 86		
67 7/12 N. Riv. sills and coping, *a* 30 c.	20 27		
		1,491	67½
31,662 feet N. Carolina joisting and flooring, *a* 16 c.	5,065 92		
6,940 feet N. Carolina ceiling joist, *a* 5 c.	347 00		
6,543 feet roofing, including slate and tin, *a* 18 c.	1,177 74		
9,500 feet studded partition, *a* 2½ c.	237 50		
296 feet trussed back wall to warehouse, sheathed and covered with tin, *a* 22 c.	65 12		
78 feet, sup'l, trussed and bolted gutters to roof, *a* 15 c.	11 70		
122 windows and door-frames, including the sash, blinds, outside doors, and spleyed jambs, *a* $15	1,830 00		
60 inside door jambs, trimmed ready for plastering, *a* $3	180 00		
65 risers to geometrical stair-case, *a* $5	325 00		
90 risers to back stairs, *a* $2	180 00		
28 risers to stairs descending to cellar stairs, *a* $2½	70 00		
180 of sky-light sash, *a* 20 c., 36 00; 300 ft. partels to do., *a* 7 c., 21 00	57 00		
243 feet, superficial, of reservoir, lined with sheet-lead, *a* 55 c.	133 65		
120 feet 5 x 5 N. C. clothes posts, dressed on roof, *a* 15 c.	18 00		
		10,359	99½
Carpenters' work, lumber, and hardware furnished	9,698 63		
650 ft., sup'l, of stone fronts and doors and sash and shutters, *a* $1	650 00		
514 feet of balcony floors laid, *a* 15 c.	77 10		
		10,425	73

27,640 lbs. of casting for girders, columns, store fronts, &c., *a* 3 c.....	829 20	
5 cast-iron cylinders for vaults.....	11 20	
725 ft. of wrought-iron brackets for balconies, *a* 10 c.....	72 50	
		912 90
595 ft. of largest class of tin gutter and spout, *a* 20 c.....		119 00
167 yds. of 4-coat painting to brick cornice, *a* 37 c.....	61 79	
1,391 yds. of one-coat painting, *a* 7 c.....	97 37	
26 " of 3-coat painting, *a* 20 c.....	5 20	
		164 36
786 " finished plastering, *a* 25 c.....	196 50	
4,524 " of lathing and one coat painting, *a* 9 c.....	407 16	
		603 66

Rule Plea.

Whereupon, on motion of the said plaintiff, by his attorneys aforesaid, it is ruled by the court here, that the said defendant answer to the declaration aforesaid of the said plaintiff in the plea aforesaid at the next March term of the said court, or judgment by the court here will be rendered against her in default thereof.

Thereupon the defendant, by her attorney aforesaid, defends the force and injury, when, and so forth, and prays leave of the court here to imparle until the fourth Monday of March next, and then to answer to the declaration aforesaid of the said plaintiff in the plea aforesaid; and to her it is granted. The same day is given to the said plaintiff, then and there, and so forth.

Mar. Term, 1856.

At which mentioned fourth Monday of March, in the year eighteen hundred and fifty-six, come again into the circuit court here, as well the said plaintiff, by his attorneys aforesaid, as the said defendant, by her said attorney; whereupon the said defendant, by her attorney aforesaid, submits to the court here the following motion, to wit:

2d Rule in Pl'ff to elect, &c., &c.

ZEPHENIAH JONES vs. ANN R. DERMOTT. } No. 129.—Trials March Term, 1856.

SAME vs. SAME. } No. 923.—Bill in Chancery.

The defendant in the aforesaid cases now here submits to the court this her motion for a rule in plaintiff to elect, during the

present term, between his said action of debt, pending on the common-law side of this court against this defendant, and his said bill pending on the equity side of this court against the said defendant, as to the sum of money, to wit: $14,000 with interest, for which a decree is prayed against said defendant by plaintiff in his said bill.

WALTER JONES, *for Def't.*

28 April, 1856.

Pl'ff elects to recover only $5,000, *mentioned in Bill in Ch'y.*

Whereupon the said plaintiff, by his attorneys aforesaid, filed in court here the following answer to the motion aforesaid of the said defendant, to wit:

ZEPHENIAH JONES vs. ANN R. DERMOTT. } No. 129.—Trials March Term, 1856.

In answer to a motion this day made by the defendant in the above entitled action to elect, &c.:

The plaintiff says, he elects to recover in this action only the $5,000 mentioned in his said bill in equity, to be paid by defendant on the completion of the said stores and warehouse in said bill mentioned and claimed on the 1st October, 1851, with interest, and hereby disclaims all and every right or pretension in this cause to recover any portion of said $14,000.

Order of Court dismissing Bill in Chancery, quo ad the $5,000.

Whereupon the court made the following order, to wit:

The plaintiff having made his election under the said order or rule made at March term, 1854, as aforesaid, to prosecute this action of debt for the recovery of the said sum of $5,000:

It is further ordered by the court, that the said bill in chancery be dismissed, and the same is dismissed accordingly, quo ad the said $5,000.

By order of the court.

Test: JNO. A. SMITH, *Clerk.*

29th April, 1856.

Pleas by Defendant.

1st Plea.

1. And the said defendant, by W. Jones and J. C. Brent, her attorneys, comes and defends the wrong and injury, when, &c., and says, that she does not owe the said sums of money above mentioned, or any or either of them, or any part thereof, in manner and form as the said plaintiff hath above thereof complained against her, and of this the said defendant puts herself upon the country, &c.

2d Plea.

2. And for further plea in this behalf, as to the said first count of the said declaration—that is to say, as to so much of the said

declaration as demands the sum of five thousand dollars for the price and value of certain work and labor done and materials furnished by the said plaintiff to the said defendant, and used and employed by her in and about the erection of certain buildings, and finishing and completing of certain stores in the said buildings, for the said defendant—the said defendant, by leave of the court here, for this purpose first had and obtained, according to the form of the statute in such case made and provided, says, that the said plaintiff ought not to have or maintain his aforesaid action thereof against her, because she says that whereas heretofore, to wit, on the 22d day of April, in the year 1851, at the county of Washington, in the District aforesaid, by certain articles of agreement then and there made, concluded, and agreed upon between the said plaintiff, by the name and description of Zepheniah Jones, of the city of Washington, mason and house-builder, of the one part, and the said defendant, by the name and description of Ann R. Dermott, of the same city, of the other part, sealed with the respective seals of the said plaintiff and defendant, the date whereof is the same day and year aforesaid, the said parties did covenant and agree together, each with the other, that he the said plaintiff should and would well and faithfully do, perform, and execute, in good, substantial, and workmanlike manner, and in a neat style of finish, such as is proper to the sort and kind of work in its various details, all and singular the houses, buildings, and work of every sort and kind described and specified in a certain schedule to the said articles annexed, marked A, (copied in page 137,) and which, together with all its appendages and details, was to be taken and regarded as part and parcel of the said articles, comprehending all the work and labor of every sort necessary and proper for the pulling down and removal of the houses and buildings standing, or lately standing, on the lot referred to in said schedule, and for the removal and clearing off all the old materials and rubbish, and for the rebuilding and completion of the new houses and buildings to be erected on said lot, according to the specifications of said schedule; that he the said plaintiff would also procure and supply, or cause to be supplied and procured, all and singular the materials, implements, fixtures, matters and things requisite and proper for the execution of the said work in all its parts and details, and for the complete fitting for use and occupation of all the houses and buildings, and the several apartments of the houses and buildings to be erected pursuant to the plan of the works described and specified in said schedule; that the said work and works, and the several parcels and parts thereof, shall be executed, finished, and ready for use and occupation, and be delivered over, so finished and ready for use and occupation, at the time and times following, that is to say: the three stores described in said schedule as fronting on Market space, and the warehouse on 7th street, on or before the first day of

October then next ensuing, and all the residue of said work on or before the first day of December then next ensuing. That the said defendant, in consideration of the covenants and agreements on the part and behalf the said plaintiff to be performed and executed as aforesaid, and of the due performance and execution of the same, and in full payment and satisfaction for all the work and labor aforesaid, and for all the materials, implements, fixtures, &c., to be by him procured and supplied as aforesaid, should well and truly pay him the full and just sum of twenty-four thousand dollars, by the instalments and at the time and times following, that is to say: five thousand dollars on the first day of July then next ensuing, the further sum of five thousand dollars on the first day of October then next ensuing, the said stores and warehouse being then executed, finished, and ready for use and occupation, and delivered over as above mentioned and agreed on; and the residue of the said sum of twenty-four thousand dollars, to wit: fourteen thousand dollars on the first day of January, A. D. 1860, with interest as follows, that is to say: four thousand dollars, part thereof bearing interest from the first day of May then next ensuing, and the residue from and after the complete execution, finish, and delivery of the said work on the first day of December then next ensuing, and all such interest shall be paid quarter-yearly, that is to say: one-fourth part of the yearly interest shall be paid at the expiration of every quarter of a year, from and after the time when the same shall have begun to run; that on the complete execution, finish, and delivery of said work on the first day of December as aforesaid, she, the said defendant, should give her bond to the said plaintiff for the due payment of the said sum of fourteen thousand dollars, payable on the said first day of January, in the year 1860, and the interest payable as aforesaid; and shall also give collateral security for the same in and by a deed of trust upon the property on which the said plaintiff had agreed to execute the works specified in said schedule as aforesaid, in which deed there should be inserted, among the other matters usual and proper in such instruments, a clause empowering and requiring the trustee in such deed named to collect and receive from any tenant or tenants of the said premises every such portion and instalment of said interest as shall be and remain unpaid and in arrears for the space of twenty days after demand and refusal of the same; and, as a still further security for the said sum of money and interest, that the same shall constitute and remain a good and valid lien on all the said property, according to the provisions of the act of Congress in such cases provided; but no such lien shall exist, or be or inure to the benefit of any person or persons whatsoever, other than said plaintiff, his executors and administrators, under any pretence of work and labor done, or materials supplied by his procurement, for the execution of his contract and agreement aforesaid; and he shall make all his

contracts for such work, labor and materials, on his own individual and personal account and credit, and so as to forefend all claims on the part of any person but himself to any lien or liens on said property, as by the said articles of agreement, and the said schedule, reference being thereunto had, will (amongst other things) more fully and at large appear, (copied in page 137,) which said articles, together with said schedule, being parcel thereof as aforesaid, the said defendant brings here into court; and the said defendant, protesting that the said plaintiff did not at any time or times whatever, well and truly observe, keep, fulfil, or perform the said covenants, conditions, and agreements on his part and behalf to be observed, kept, fulfilled, and performed, or any or either of them, according to the tenor and effect, true intent and meaning of the said articles, says nevertheless that the said sum of $5,000 demanded by the said plaintiff in the said court as the price and value of the work, labor, materials, buildings, and stores, therein mentioned, is the same identical instalment of five thousand dollars (being parcel of the entire price of $24,000 in the said articles mentioned) which the defendant, in and by the said articles, covenanted and agreed to pay to the plaintiff on the first day of October next ensuing the date of the said articles, upon the condition therein appearing, and was always, as well before as after the beginning of this suit, and yet is, in fact, claimed and demanded by the said plaintiff of the said defendant as and for such instalment, and as due and owing from said defendant to said plaintiff by the terms, force and effect of the said articles of agreement: without this, that the said work and labor, materials, buildings and stores in the said first count mentioned were done, furnished, or erected, or that any claim or demand for the said sum of $5,000 therein demanded, or for any part thereof, had or at any time or times whatsoever before the bringing of this suit accrued to *to* the said plaintiff against the said defendant by reason or in the execution of any contract or agreement whatsoever between the said plaintiff and the said defendant other than or different from the articles of agreement made and concluded between said plaintiff and said defendant in manner and form aforesaid, or for any consideration or on any account whatsoever other than the identical consideration and the said instalment of the identical consideration therein covenanted and agreed on the part and behalf of said defendant to be paid to the said plaintiff in full payment and satisfaction for all the work and labor on the part and behalf of said plaintiff, therein covenanted and agreed to be done and performed as aforesaid, and for all the materials, implements, fixtures, &c., on his part therein covenanted and agreed to be by him procured and supplied as aforesaid; and this the said defendant is ready to verify; wherefore she prays judgment, if the said plaintiff ought to have or maintain his aforesaid action thereof against her, &c.

3d Plea.

And for a further plea in the said first count of the said declaration, the said defendant, by like leave of the court here for this purpose first had and obtained, according to the form of the statute in such case made and provided, says, that the said plaintiff ought not to have or maintain his aforesaid action thereof against her, because, referring to the said articles of agreement in her said second plea above mentioned, and therein recited and set forth as aforesaid, and to the said schedule thereto annexed as aforesaid, all of which she prays may be taken and regarded as part and parcel of this her plea, in like manner as if the same had been herein again recited and set forth, and again made profert of; and also referring to all such of the statements and averments in the said plea contained and set forth, as go to aver and show the absolute identity of the said sum of $5,000 demanded by the said plaintiff in the said first count of his declaration, and of the consideration, cause and grounds of such demand set forth in the said count, with the said instalment of $5,000, in and by the said articles covenanted and agreed on the part and behalf of the said defendant to be paid to the said plaintiff on the said first day of October then next ensuing the date of said articles, upon the condition therein appearing, and with the consideration, cause and grounds expressed in the said articles for the payment of said instalment, which identity she now again affirms and avers, says, that though she did well and truly fulfil and perform the said articles of agreement in all things on her part and behalf to be fulfilled and performed, according to the tenor and effect, true intent and meaning of said articles, yet the said plaintiff failed, neglected and refused to fulfil and perform the covenants and agreements on his part and behalf to be fulfilled and performed according to the tenor and effect, true intent and meaning of the said articles, and, among other such failures, neglects and refusals, that the said three stores and the warehouse in the said articles, and in the said schedule mentioned, described and specified, were not executed, finished and ready for use and occupation, and delivered over, so executed, finished and ready, to said defendant, either on or at any time before the said first day of October then next ensuing the date of said articles, but that the said plaintiff utterly failed, neglected and refused so to execute, finish, make ready and deliver over the said stores and warehouse; and this the said defendant is ready to verify; wherefore she prays judgment, if the said plaintiff ought to have or maintain his aforesaid action thereof against her, &c.

4th Plea.

And for a further plea to the said first count of the said declaration, the said defendant, by like leave of the court here for this purpose first had and obtained, according to the form of the statute

in such case made and provided, says, that the said plaintiff ought not to have or maintain his aforesaid action thereof against her, because the said defendant, referring to the said articles of agreement in her said second plea above mentioned, and therein recited and set forth as aforesaid, and to the said schedule thereto annexed as aforesaid, all of which she prays may be taken and regarded as part and parcel of this her plea, in like manner as if the same had been herein again recited and set forth, and again made profert of; and also referring to all such of the statements and averments in her said plea contained and set forth, as go to aver and show the absolute identity of the said sum of $5,000 demanded by the said plaintiff in the said first count of his declaration, and of the consideration, cause and grounds of such demand set forth in the said count, with the said instalment of $5,000, in and by the said articles covenanted and agreed on the part and behalf of the said defendant to be paid to the said plaintiff on the said first day of October then next ensuing the date of said articles, upon the consideration therein appearing, and with the consideration, cause and grounds expressed in the said articles for the payment of said instalment, which identity she now again affirms and avers, says that, though she did well and truly fulfil and perform the said articles of agreement in all things on her part and behalf to be fulfilled and performed, according to the tenor and effect, true intent and meaning of the said articles, yet the said plaintiff failed, neglected and refused to fulfil and perform the covenants and agreements on his part and behalf to be fulfilled and performed according to the tenor and effect, true intent and meaning of the said articles; and, among other such failures, neglects and refusals, that the said three stores and the warehouse, in the said articles and schedule mentioned, described and specified, never were, either on the said first day of October next ensuing the date of said articles, or at any time whatsoever before or after that day, executed, finished and ready for use and occupation, and delivered over, so finished and ready, to the said defendant; but that the said plaintiff utterly failed and refused so to execute, finish, make ready for use and occupation, and deliver over the same at any time or times whatsoever; and this the said defendant is ready to verify; wherefore she prays judgment, if the said plaintiff ought to have or maintain his aforesaid action thereof against her, &c.

JONES & BRENT,
For Def't.

Leave to amend Nar.

Whereupon the said plaintiff, at March term, 1856, being the 30th day of June, 1856, by his attorney aforesaid, prays leave of the court here to amend the nar filed in the said cause; which being granted, he filed in court here the following amended nar, to wit:

Amended Nar.

ZEPHENIAH JONES
vs.
ANN R. DERMOTT.

DISTRICT OF COLUMBIA,
Washington County, to wit.

1st Count. Ann R. Dermott, late of the county aforesaid, was summoned to answer unto Zepheniah Jones, in a plea that she render unto the said Zepheniah Jones the sum of ten thousand dollars, which to the said Zepheniah she owes, and from him unjustly detains.

And whereupon the said plaintiff, by Bradley and Carlisle, his attorneys, complains, for that whereas heretofore, to wit, on the 22d day of April, in the year 1851, at the county aforesaid, by certain articles of agreement then and there made between the said plaintiff, by the name and description of Zepheniah Jones, of the city of Washington, in the District of Columbia, mason and housebuilder, of the one part, and the said defendant, by the name and description of Ann R. Dermott, of the same city, of the other part, (one part of which said articles of agreement, sealed with the seal of the said defendant, the said plaintiff now brings here into court,) the date whereof is the day and year aforesaid, in consideration that the said plaintiff thereby agreed well and faithfully to do, perform and execute in good, substantial and workmanlike manner, and in a neat style of finish, such as is proper to the sort and kind of work in its various details, all and singular the houses, buildings and work of every sort and kind, and described and specified in a certain schedule to the said articles annexed, and marked A, (copied in page 137,) and which was to be taken and regarded as part and parcel of the said articles, comprehending all the work and labor of every sort necessary and proper for the pulling down and removal of the houses and buildings then standing, or lately standing, on the lot referred to in said schedule, and for the removal and clearing off the old materials and rubbish, and for the rebuilding and completion of the new houses and buildings to be erected on said lot, according to the specifications of said schedule: and further, to procure and supply, or cause to be supplied and procured, all and singular the materials, implements, fixtures, matters and things requisite and proper for the execution of the said work in all its parts and details, and for the complete fitting for use and occupation of all the houses and buildings, and the several apartments of the houses and buildings, to be erected pursuant to the plan of the works described and specified in said schedule: and further agreed, that the said work and works and the several parcels and parts thereof should be executed and finished and ready for use and occupation at the time and times fol-

lowing, that is to say, the three stores described in said schedule as fronting on Market space, and the warehouses on Seventh street, on or before the first day of October then next ensuing; and all the residue of the said work, on or before the first day of December then next ensuing. The said defendant thereby agrees and bound herself to the said plaintiff, well and truly to pay him the full and just sum of twenty-four thousand dollars, ($24,000,) by the instalment and at the time and times following, that is to say: five thousand dollars on the first day of July then next ensuing; the further sum of five thousand dollars ($5,000) on the first day of October then next ensuing, the said stores and warehouse being then executed, finished and ready for use and occupation, and delivered over as above mentioned; and the residue of the said sum of twenty-five thousand dollars, to wit: fourteen thousand dollars on the first day of January, A. D. 1860, with interest and with security, as in and by the said articles, brought into court as aforesaid, more fully and at large appears.

And the said plaintiff in fact saith, that he did in all things well and faithfully fulfil and perform the said agreement on his part, according to the terms, true intent and meaning of the said agreement, and that the said sum of five thousand dollars, secondly above mentioned, became and was due and payable to him, the said plaintiff, by her, the said defendant, according to the tenor and effect of the said agreement, to wit: on the first day of October, in the year 1851, at the county aforesaid; yet the said defendant the said sum of money, or any part thereof, to the plaintiff hath not paid, but the same, or any part thereof, to pay wholly neglected and refused, to wit: on the day and year aforesaid, at the county aforesaid, contrary to the tenor and effect of the said agreement; whereby an action hath accrued to the said plaintiff, to demand and have of the said defendant the said sum of five thousand dollars, above demanded; but the said defendant, although often requested, hath not paid the said sum of money to the plaintiff, or any part thereof, but hath hitherto neglected and refused, and still neglects and refuses so to do, to the damage of the plaintiff ten thousand dollars.

2d Count. (In all respects as the first, down to the averment of performance by the plaintiff; then as follows:)

And the said plaintiff in fact saith, that he did on his part faithfully perform all things in the said agreement stipulated to be done and performed, according to the true intent and meaning of the said agreement; and did in fact do and perform all the work and labor, and procure and supply all the materials and implements, and other matters and things whatsoever, stipulated in and by the said agreement to be done, performed, procured, furnished or supplied by him in the premises; but that the said defendant departed from the terms and stipulations of the said agreement,

and required the said plaintiff to do and perform additional work and labor, and to procure and furnish additional materials over and above the work, labor and materials so as aforesaid by him agreed to be done, performed, procured and furnished in the premises; whereby the said defendant delayed and hindered the said plaintiff in the premises, and, in fact, prevented him from having the said stores and warehouse executed, finished, and ready for use and occupation and delivered over to the said defendant, on or before the said first day of October, as the said plaintiff was ready and willing to do, and would have done, but for the said departure by the said defendant from the stipulations of the said agreement, and the additional work, labor and materials, so as aforesaid by her required in the premises. And the said plaintiff in fact saith, that, nevertheless, he did in fact execute and finish the said stores and warehouse, ready for use and occupation, and did deliver the same over to the said defendant, executed, finished, and ready for use and occupation, and the same were, in fact, so accepted and received by the said defendant, and used, occupied and enjoyed by her within due and reasonable time after the said first day of October, to wit: on the fourth day of December, in the year eighteen hundred and fifty-one, at the county aforesaid; and that the said sum of five thousand dollars, secondly above in this count mentioned, became and was due and payable to him by the said defendant, to wit: on the day and year last aforesaid, at the county aforesaid; whereby an action accrued to the said plaintiff to demand and have of the said defendant the said sum of five thousand dollars, above demanded. Yet the said defendant, though often requested, to wit, &c., the said sum, or any part thereof, hath not paid, but the same, or any part thereof, to pay hath hitherto refused, and still refuses, to the damage of the plaintiff ten thousand dollars.

3d Count.

3d Count. And whereas also the said Ann R. Dermott, at the county aforesaid, on the first day of July, 1852, was indebted to the said Zephenia Jones in the sum of five thousand dollars, for the price and value of certain work and labor done, and materials furnished by the said Zephenia Jones to the said Ann R., and used, employed by her in and about the erection of certain buildings, and finishing and completing certain stores in said buildings for the said defendant, in the city of Washington and county aforesaid, at her request;

And in a like sum of money, for so much money paid by the plaintiff for the use of the defendant, and at her request;

And in a like sum of money, for so much money had and received by the defendant for the use of the plaintiff, and for a like sum of money by the said plaintiff paid, laid out and expended

for the use of the defendant and at her request, whereby and by reason whereof, and by reason of the non-payment thereof to the plaintiff on his request, an action hath accrued to the plaintiff to demand and have of the defendant the said sum of money above mentioned; yet the defendant has not paid the same or any part thereof, although the same has been repeatedly demanded of her by the said plaintiff, to the damage of the plaintiff ten thousand dollars, and therefore he sues.

4th Count.

4th Count. And for that whereas also the defendant, heretofore, to wit, on the day and year last aforesaid, at the county aforesaid, was indebted unto the said plaintiff in the sum of ten thousand dollars for work and labor done and performed, and for materials furnished by the plaintiff for the defendant, at her special instance and request, and in the further sum of ten thousand dollars for money laid out and expended by the plaintiff to the use of the defendant, at her special instance and request, to be paid to the plaintiff by the defendant, when she, the said defendant, should be thereto afterwards requested, whereby, and by reason of the said last mentioned sums of money being and remaining wholly unpaid, an action hath accrued to the said plaintiff to demand and have of and from the said defendant the said sums of money in this count above demanded; yet the said defendant, although often thereto requested, to wit, &c., the said sums of money, or either of them, or any part thereof, hath not paid, but the same, or any part thereof, to pay hath hitherto refused and still refuses, to the damage of the plaintiff ten thousand dollars, and therefore he brings suit, &c.

BRADLEY & CARLISLE,
For Pl'ff.

NOTE.—A bill of particulars of the work, &c., mentioned in this count, is herewith filed, the same being for the stores and warehouse, and for extra work, &c., beyond the contract.

ANN R. DERMOTT
To Z. JONES.....DR.

To 202 ft. lineal of dressed, $\frac{4}{5}$ rails to clothes-posts on roof, 8 c.....	$16 16
" 71½ ft. (sup.) balcony frame and floor leading to roof, 15 c.....	10 75
" 24½ ft. (lineal) of iron railing to do., and painting, $2 30.....	56 16
" 5 heavy wrought iron brackets furnished and put up to do., $4 50.....	22 50
" 7⅔ feet of extension of door frame for a transom over the door leading to balcony, 5th story, and painting, 22 c.....	1 68

To 3 lights 11 x 23 sash and glazing and painting to do., 87½		$2 62½
" 40 ft. (superficial) of opened and rabbeted door jambs, extended for extra transoms over doors, and painting do., 35 c.		14 00
" 37⅓ ft. (lineal) of narrow door jambs extended for extra transoms, and painting do., 16 c.		5 97
" 80 ft. (lineal) transom rail, rabbeted and bedded, casings to edges and painting of do., for extra transom, 25 c.		20 00
" 138⅔ ft. (lineal) of architraves to extra transoms, and painting, 14 c.		19 41
" 26 lights of transom sash 13 x 31, including the glass and painting, $1 75		45 50
" 52 pivots to extra transoms, 10 c.		5 20
" 25 ft. sup. of platform, from head of stairs to the doors at balcony, 5th story, including the plastering to ceiling, 20 c.		5 00
" 1 extra newel post, turning and painting of do.		1 00
" 5⅙ ft. of facias, and noing and painting of do., 28 c.		1 44
" 5⅙ " mahogany hand-rail and ballusters, and painting do., $1 20		6 20
" 175 ft. of stud partition and plastering to do., occasioned by altering the back staircase, at 6 c. per foot		10 50
" 1,187 ft. (sup.) battening to west wall, by direction of Miss Dermott, including the value of the lathing to do., 3½ c.		41 54¾
" 209½ ft. (lineal) of small jamb casings to window frames, made necessary on acct. of battening, and painting do., $4 72		9 42¾
" 10 ft. of plain casing to the opening in partition, made by the change ordered to back stairs, 10 c.		10 00
" increased size of closets, by change of do.		6 00
" 62 feet lineal of 4 x 6 N. C. posts, and lintel put under iron girder across entrance passage, to assist in supporting chimney, 12 c.		7 44
" 35⅓ ft. sup'l ⅝ open jambs, to cover rough posts, and painting, 28 c.		9 89
" 32 ft. (lineal) bedded grounds to do., 9 c.		2 88
" 64½ ft. (lineal) ⅝ opened pilaster to do., and painting, 20 c.		12 90
" 8 ft. of crown moulding to do., 12 c.	96	
" 2 bare blocks, 35 c.	70	
		1 66
" 2 trap-doors, one over each reservoir, 2 dolls.		4 00
" 432 ft. (sup'l) stud partition, taken down and set		

up again on principal floor, by order Miss Dermott, 1½ c.	$6 48
To 46 ft. of mahogany hand-rail, back stairs—more value than cherry, 8 c.	3 68
" 1,440 ft (sup.) of joists to front stairs, levelled up one foot above contract, by direction of Miss Dermott, and afterwards levelled and relevelled by her order, 1½ c.	21 60
" joist holes, cut out one foot high for the above, and filling up do., furnishing mortar and brick, 37½ c.	13 50
" 748 lbs. cast-iron girders, put across main passage to support chimney, including setting of do., 3½ c.	26 18
" 645 lbs. of cast-iron girder, put across the alley, 3d story, 3¾ c.	24 18¾
" 405 lbs. of cast-iron girder across circular passage, 4th story, 3⅞ c.	15 69
" 1,027 lbs. of cast-iron girder, put across alley, 7th street front, 3½.	35 94½
" 105 lbs. of wrought-iron rods, with nuts, to strengthen vaults, 12½ c.	13 12½
" 260 lbs. of cast-iron washers to heads of bolts, 3¼ c.	8 45
" 3,300 brick laid in raising the store floor one foot, by direction of Miss Dermott, and by her direction taken off, 6 c.	19 80
" use of long timbers, and working sewering front....	30 00
" 455 ft. (sup.) 14 in. front wall and rebuilt, brick enveloped in cement, and faced in tucked joints, oiled and penciled, 30 c.	136 50
" 3,000 best quality front brick, furnished for do., 20 dolls.	60 00
" 4 barrels of cement, and the necessary sand and labor, $2 50.	10 00
" 37 feet lineal of marble heads, sills, replacing of those which broke by the settlement, including setting of do., $1 25.	46 25
" 105 feet (sup'l) 9-in. wall west, over alley, taken out twice and rebuilt, because of settlement, 25 c..	26 25
" 210 feet lineal of joisting, rised, by cutting out brick over do. and filling again with brick and mortar underneath, rendered necessary by reason of settlement, 25 c.	52 50
" 14 yards of excavation, by extending alley vaults 5 feet, 25 c.	3 50
" 780 brick laid in arch of vault, by extension of do.; the brick all hard, and laid in cement and grated, 15 c.	11 70

To $12\frac{5}{12}$ ft. lineal of water-table more than contract, $1 25	$15 52
" 6 extra bells in 5th story, hung in metallic tubes, $7 50	45 00
" 124 feet lineal of extra cast-iron soil pipe, 75 c.	93 00
" four elbows	6 25
" 2 extra cast-iron curbs to vaults, made necessary by reason of the undue settlement	5 00
" 5 yards of stone paving in extension of vaults, 50 c.	2 50
" sundry repairs to plastering and lathing, occasioned by the insertion of gas pipes	25 00
" cutting through the walls of vault, and repairing of do., for the change of direction of the soil pipe	3 00
" altering of eave gutter to warehouse, rendered necessary in consequence of the settlement in that wall	3 00
" $7\frac{15}{25}$ perches of stone footings to south front wall and a part of the east wall, the old stone wall not being as deep as was supposed, 30 c.	22 80
	$1,136 23½

Instalment due on contract on delivery of store and warehouse, $5,000.

Rule Plea to amended Nar.

Whereupon, on motion of the said plaintiff, by his attorneys aforesaid, it is rule by the court here that the said defendant answer to the amended declaration aforesaid of the said plaintiff in the plea aforesaid, or judgment by the court here will be entered against her in default thereof. Thereupon the said defendant, by her attorneys aforesaid, filed the following objections to the reception and allowance of the said amended declaration, to wit:

Objections to reception and filing of amended Nar.

The defendant, by her counsel, takes the following objections to the reception of the within amended declaration, to wit:

1st. Because neither the said declaration nor any of the counts therein contained come within the terms and intent of the general leave and allowance of amendment granted by the court in this cause, and under color of which they have been filed by the plaintiff.

2d. Because if any of the counts contained in said declaration could be held to come within the terms and intents of the leave and allowance of amendment actually granted in this cause as afore-

said, and within the established limits of the competency, power, and authority of this court to grant amendment of pleading; yet the said 3d and 4th counts are quite beyond the court's power, authority, and competency in such cases.

W. JONES & J. C. BRENT,
For Def't.

Oyer of Articles of Agreement referred to in 1st and 2d counts of amended Nar, prayed under protest.

And thereupon the said defendant, by her attorneys, further says, that having already filed objections to the reception of the amended declaration, and more especially of the 3d and 4th counts thereof, filed by plaintiff in this case, under color and pretence of the liberty granted by the court to amend his original declaration, now, without waiving or in any manner relinquishing said objections, or any of them, but still reserving and insisting on the same, prays oyer of the articles of agreement mentioned and recited in the 1st and 2d counts of his pretended declaration.

And the said defendant, protesting that the said declaration has never been presented to the court for acceptance, or in any manner allowed or authorized by the court, the defendant disavows and protests against the authority of the clerk to enter such rule, or in any manner to enforce it or carry it into effect, either by defaulting defendant or by any pro forma issue made by himself.

September 24th, 1856.

Continuance to Oct. Term, 1856.

Thereupon further process of and upon the premises aforesaid between the parties aforesaid, by consent of the said parties, and their attorneys aforesaid, and by order of the court here thereon, the said cause is further continued until the third Monday of October next.

At which mentioned third Monday of October, in the year eighteen hundred and fifty-six, to which day the said cause was continued, comes again into the circuit court here, as well the said plaintiff, by his attorneys aforesaid, as the said defendant, by her attorneys aforesaid.

Objections to filing amended Nar overruled.

And thereupon the court, after hearing arguments as well on the part of plaintiff as of defendant, upon the said objections filed by the defendant on the first day of July preceding, to the reception and allowance of the said amended declaration, overruled all the said objections, and allowed the said amended declaration to stand; to which defendant, by her attorneys, excepted.

Oyer of Writ craved.—Oyer refused by the Court.

And thereupon the said defendant, by her attorneys aforesaid, craves oyer of the original writ of capias ad respondendum in this

suit, and prays the court to order the clerk to give the defendant such oyer; which prayer the court refused to grant.

Motion to quash orig'l Wr.

Whereupon the said defendant, by her attorneys aforesaid, preferred to the court the following motion:

1. That the original writ in this cause be quashed, for vices and defects appearing on its face, inasmuch as it names no certain sum of money as constituting the debt sued for.

2. That the amended declaration be set aside for vices and defects apparent on its face, in this, to wit:

1st. That the commencement of the declaration is untrue in fact, and varies from the writ, inasmuch as defendant was not summoned to answer plaintiff in such sum as is set forth in said commencement.

2dly. That the aggregate amounts of the debts declared for in the said declaration amount to more than the sum of money named in the commencement, &c.

3dly. That as to the 3d and fourth counts of said declaration, divers and distinct causes of action are joined, instead of declaring for each of the same in a separate count.

4thly. That by the proceedings and record in this case the plaintiff is estopped from introducing the causes of action introduced into the said counts.

W. JONES,
J. C. BRENT,
For Def't.

Objections to amended Nar overruled.

In this cause, the defendant having filed objections to the filing of the amended nar, by which amendments profert was made of certain articles of agreement, and, pending such objections, having craved oyer of the said articles of agreement, to wit, on the 24th Sept., 1856, not waiving but reserving his said objections, it is now by the court ordered, this 17th January, 1857, that the said objections be overruled; and that the plaintiff have leave to withdraw the exhibit No. 1 in his bill against the said defendant, pending on the equity side of this court, on leaving a copy certified by the clerk among the files of the said equity cause.

Oyer granted.

And that thereupon the oyer craved be entered of record in this cause as granted and had; and that the day to plead be enlarged to the first Monday of February next.

By order of the court.

Test: JNO. A. SMITH, *Cl'k.*

Rule Plea to 1st Monday in Feb'y, 1857.—Pleas to amended Nar.

At which mentioned first Monday in February, 1857, the said Ann R. Dermott, the defendant, by her attorneys aforesaid, comes and defends the wrong and injury, when, &c., and craves oyer of the said articles of agreement in the said first and second counts of the plaintiff's said amended declaration mentioned and made profert of, (the same identical deed and articles of agreement being so mentioned and made profert of in each of said counts,) and it is read to her in these words: "These articles of agreement," &c., (copied in page 132;) which being read and heard, the said defendant says she does not owe the said sum of money above demanded in the said first count of the said declaration, or any part thereof, in manner and form as the said plaintiff has above thereof complained against her; and of this the said defendant puts herself upon the country, &c.; and the plaintiff doth so likewise.

Issue joined to 1st Plea.

2. And for further plea in this behalf as to the said first count of the said declaration, the said defendant, by leave of the court here, for that purpose first had and obtained, according to the form of the statute in such case made and provided, says that the said plaintiff did not fulfil and perform the said agreement in all things on his part, according to the tenor and effect of the said articles of agreement, in manner and form as the said plaintiff in the said count has averred; and of this she in like manner puts herself upon the country; and the plaintiff doth so likewise.

Issue joined to 2d Plea.

3. [Here insert the foregoing plea down to the conclusion, to the country; and omitting that, proceed as follows:] but failed and neglected so to fulfil and perform the same, and especially in this, that he did not fulfil and perform the precedent condition, upon the performance of which on his part the defendant in and by the said articles of agreement covenanted to pay the said instalment of $5,000 above demanded by plaintiff in the said first count; that is to say, that the three stores fronting on Market space, and the warehouse on 7th street, in the said articles of agreement and in the said condition mentioned, were not executed, finished, and ready for use and occupation, and delivered over so finished and ready, to said defendant, on or before the first day of October then next ensuing the date of said articles, according to the tenor and effect of said articles of agreement; and of this the defendant in like manner puts herself upon the country.

4. And as to the residue of the said declaration, the said defendant, by leave of the court here for that purpose first had and obtained, according to the form of the statute in such case made

and provided, says that the said second, third, and fourth counts of the said declaration, and the matters therein contained, in manner and form as the same are above stated and set forth, are not sufficient in law for the said plaintiff to have or maintain his aforesaid action thereof against the said defendant, and she the said defendant is not bound by law to answer the same, or any of them; and this she is ready to verify. Wherefore, by reason of the insufficiency of the said three counts of the said declaration in this behalf, the said defendant prays judgment, and that the said plaintiff may be barred from having or maintaining his aforesaid action thereof against her, &c.

And the said defendant, according to the form of the statute in such case made and provided, states and shows to the court here the following causes of demurrer to the said three counts of the said declaration, severally and respectively, that is to say:

Demurrer to 2d Count of amended Nar.

As to the said second count, for that it is argumentative, vague, and uncertain, in this, that instead of alleging and setting forth the fact or facts and circumstances of his performance of the covenants and conditions, covenanted and conditioned on his part to be done and performed in and by the said articles of agreement, and especially of his having performed the condition precedent, upon the performance whereof on his part the payment on the part of the defendant of the said instalment of $5,000, on the first day of October then next ensuing, depended, it is circuitously and argumentatively alleged in said count that he did on his part faithfully perform all things in the said agreement stipulated to be done and performed, according to the true intent and meaning of the said agreement; and for that the said count attempts to put in issue, to be tried by the country, mere inference and matter of law, viz: whether the acts, matters, or things to be adduced on his part by way of evidence to support his said allegation of performance, were, according to the true intent and meaning of the said articles of agreement, a due and sufficient performance of the covenants and conditions stipulated to be done and performed on his part in and by the said articles of agreement, and especially of the said condition precedent.

And further, that the said count is repugnant, and contains material allegations inconsistent with each other, in this, to wit: that although in the first part of said count a full and complete performance by the plaintiff of all the covenants and conditions whatsoever covenanted and conditioned on his part to be fulfilled and performed in and by the said articles of agreement, is in substance and effect alleged and averred, nevertheless, in the subsequent part of the said count the plaintiff sets up and alleges an excuse for his having failed to fulfil and perform one of the most material of his

covenants, namely, the covenant that the three stores described in the said articles of agreement as fronting on Market space, and the warehouse on 7th street, should be executed, finished, and ready for use and occupation, and be delivered over so finished and ready to said defendant, on or before the first day of October thence next ensuing; the due performance of which covenant on or before the said day was in and by the said articles of agreement made a condition precedent to said defendant's said covenant to pay to the plaintiff the said instalment of $5,000, as aforesaid.

And for that the plaintiff, in making out his said excuse, has alleged certain actings and doings of the defendant in the premises, as having hindered and prevented him from performing and fiulfilling the said condition precedent, all which actings and doings were manifestly idle, and insufficient and inoperative to produce or in any manner interpose any such hindrance, prevention, or even delay, but left the defendant perfectly free, and nevertheless bound to proceed with the execution of his said contract and the fulfilment of the said condition precedent, had he been so minded.

And for that the said count is double and multifarious in this, to wit: that in substance and effect it sets up and alleges:

First. A complete fiulfilment and performance, by himself, of the said contract in all things on his part and behalf to be fulfilled and performed.

Secondly. An excuse for not having performed and fulfilled the said condition precedent.

Thirdly. That he did perform and fulfil it within a due and reasonable time after the said first day of October.

And fourthly. That the said stores and warehouse were occupied and received by said defendant, and used, occupied and enjoyed by her, within a due and reasonable time after the said first day of October.

And further, that the said instalment is not suable and recoverable in an action of debt; but if suable and recoverable in any form of action, it should have been an action of covenant.

Dem'r to 3d and 4th Counts of amended Nar.

And, as to the said third and fourth counts, for that they are, both and each of them, double and multifarious, for that in the third count four several and distinct debts and causes of action, each debt being in the sum of $5,000, and in the fourth count two several and distinct debts and causes of action, each debt being in the sum of $10,000, are alleged and demanded.

For that the said six several and distinct allegations of debt, the four in the third count and the two in the fourth count, are not brought forward, and cannot be received and treated as so many several and distinct counts of the said declaration, being consoli-

dated with and made part and parcel (the first four) of the said third count eo nomine, and the other two of the said 4th count eo nomine; and inasmuch as all the said allegations of debt, subsequent to the first in each of the said counts, are without the commencements and conclusions proper to separate counts of a declaration, and made indispensable by the law and practice of pleading.

And for that the aggregate sum of the debts alleged and demanded in the said two counts, and in each and every of them, greatly exceeds the limit of the aggregate sum of debt sued for and recoverable in this action.

For that the said allegations of debts in the said fourth count are not laid with an alias, or in any other way to distinguish them, or the considerations of the same, or the contract by which they were created from the corresponding allegations of debts in the said 3d count, to wit: from the allegation of the debt of $5,000 for work, labor, &c., in building the three stores and warehouse in the said 3d count mentioned, or from the allegation in the said third count of the debt for five thousand dollars, for money paid, laid out and expended by plaintiff to the use of defendant; on the contrary, the said allegations of debt in the 4th count purport to be the same as the two allegations of debt in the third count, or else to include the same; and so, in either way the plaintiff in the said 4th count has demanded a double satisfaction for the same thing.

And also that the said three counts of the said declaration are in other respects uncertain, informal, and insufficient, &c.

W. JONES & J. C. BRENT,
For Def't.

Dem'r to 3d Plea to 1st Count amended Nar.

And the said plaintiff by his attorneys aforesaid, as to the said third plea of the said defendant by her thereby above pleaded to the said first count, saith that the same, and the matters therein contained, in manner and form as the same are above pleaded and set forth, are not sufficient in law to bar or preclude him, the said plaintiff, from having or maintaining his aforesaid action thereof, against the said defendant; and he, the said plaintiff, is not bound by law to answer the same. And this the said plaintiff is ready to verify. Wherefore, by reason of the insufficiency of the said plea in this behalf, the said plaintiff prays judgment and his debt aforesaid, together with his damages by him sustained on occasion of the detention thereof, to be adjudged to him, &c., &c.

And the said plaintiff, according to the form of the statute, &c., states and shows to the court here the following causes of demurrer to the said plea, that is to say:

1. That it is set up and alleged in the said plea, as the true intent and meaning and legal effect of the before mentioned articles of agreement, that the said stores and warehouse should be exe-

cuted, finished, and ready for use and occupation, and delivered over so finished and ready to the said defendant, on or before the first day of October next ensuing the date of the said articles, as a condition precedent to any duty upon the defendant to pay the said sum of $5,000.

2. That the said plea attempts to put in issue to be tried by the country mere inference and matter of law, viz: whether it be the true construction of the said articles of agreement, that the said sum of $5,000 was only to be paid on the express and absolute condition that the said stores and warehouse should be executed, finished, and ready for use and occupation, and delivered over so finished and ready to the defendant, on or before the said 1st day of October.

Joinder to def't's dem'r to 2d, 3d and 4th Counts of amended Nar.

And the said plaintiff says that the said 2d, 3d, and 4th of the declaration aforesaid, and the matters therein contained, are sufficient in law for the said plaintiff to maintain his action thereof against the said defendant, which said counts, and the matters therein contained, the said plaintiff is ready to verify and prove, as the court shall award; and because the defendant hath not answered the said three counts, nor in anywise denied the same, the said plaintiff prays judgment and his debt aforesaid, together with his damages, by reason of the detention of that debt to be adjudged to him, &c.

Joinder to pl'ff's dem'r to 3d Plea to 1st Count of amend. Nar.

And the said defendant saith that her 3d plea aforesaid, in manner and form aforesaid, by her, the said defendant, above pleaded to the first count of the amended nar, and the matters in the same contained, are good and sufficient in law to quash the said writ of the said plaintiff, which said plea so pleaded, and the matters therein contained, she, the said defendant, is ready to verify and prove, as the said court shall award; and because the said plaintiff hath not answered the said plea, nor hitherto in any manner denied the same, she, the said defendant, as before, prays judgment, &c.

Venire facias to March term, 1857.

Therefore, as well to try the issues aforesaid above joined between the parties aforesaid, to be tried by the country, as to inquire what damages the said plaintiff hath sustained by reason of the premises whereof the said parties have put themselves upon the judgment of the court, if judgment shall thereupon happen to be given for the said plaintiff against the said defendant, let a jury thereon appear before the court here, on the fourth Monday of March next, by whom, &c., and who neither, &c., to recognise, &c., because as well, &c. The same day is given to the said parties then and there, and so forth.

Motion by pl'ff for judg't on his dem'r to 3d Plea, and for interlocutory judg't on def't's demurrers.

At which said fourth Monday of March, in the year of our Lord one thousand eight hundred and fifty-seven, comes again into the circuit court here, as well the said plaintiff, by his attorneys aforesaid, as the said defendant, by her attorneys aforesaid; whereupon the said plaintiff, by his attorneys aforesaid, moves the court to cause and order judgment to be entered for him in this cause, as follows:

Upon his demurrer to the third plea, pleaded as aforesaid, judgment for the plaintiff for costs.

And also upon the several and respective demurrers filed by the said defendant; judgment for the plaintiff; each of said last mentioned judgments to be interlocutory only, and to be followed by a special venire for an inquisition to assess the damages sustained by the said plaintiff by reason of the several matters set out in said declaration, and to which said demurrers respectively relate. Judgment accordingly.

Continuance to Oct'r term, 1857.

Thereupon further process of and upon the premises aforesaid between the parties aforesaid, by consent of the said parties, by their attorneys aforesaid, and by order of the court here, the said cause is continued until the third Monday of October next.

And now at this day, to wit, the said third Monday of October, in the year eighteen hundred and fifty-seven, comes again into the circuit court here, as well the said plaintiff, by his attorneys aforesaid, as the said defendant, by her attorneys aforesaid; whereupon, for trying the issues aforesaid, it is ruled by the court here that twelve persons from the panel of petit jurors returned to the court here by the marshal of the District of Columbia, be called.

Whereupon the defendant now here moves the court, before the jury is empanelled, to require the plaintiff to elect between a recovery on the bills of particulars filed in this cause under the third and fourth counts of the amended nar, and a recovery on the same causes of action under the bill in equity filed on the equity side of this court by the above plaintiff against this defendant.

R. J. BRENT,
J. C. BRENT,
For Def't.

The plaintiff having heretofore, under the order of this court, elected to prosecute in equity his claim for $14,000, mentioned in the contract, which election is still operative, the court refuses so much of the defendant's motion as applies to that sum, and grants the same so far as relates to the alleged extra work, it being the extra work described in Exhibit No. 3, filed with the proceedings in equity, to wit, $1,136 $\frac{23}{100}$.

By order of the court.

And thereupon the plaintiff elects to prosecute his said demand on account of extra work in this present suit at law, being the same extra work described in the Exhibit No. 3, with the proceedings in equity, viz., $1,136 $\frac{23}{100}$.

BRADLEY, CARLISLE & MAURY, *For Pl'ff.*

Octo. 26th, 1857.

The plaintiff having elected to prosecute his claim for extra work in this suit, the defendant objects, and insists that the plaintiff ought not to be allowed to introduce by his amended nar, or otherwise, a new and distinct cause of action which the plaintiff did not originally declare on, or sue for, as shown in his election heretofore filed, as well as by his original nar; and thereupon, the defendant moves the court to order said fourth count of the amended nar to be taken off the files, and stricken out of the proceedings in this cause; but the court refused to grant said motion; and thereupon the defendant excepts, and this, her bill of exceptions, is signed, sealed and enrolled, on this 26th Octo., 1857, before the empanelling of the jury.

JAS. DUNLOP. [SEAL.]
JAS. S. MORSELL. [SEAL.]
WM. M. MERRICK. [SEAL.]

Verdict on 1st Count—Damages $5,000.—*Jury.*

Thereupon the jury being called, came, to wit:

1. James A. Kennedy; 2. John Shaw; 3. Thomas Riggles; 4. George D. Spencer; 5. Wm. Drury; 6. Thos. Fitnam; 7. Dan'l F. Barry; 8. Alex'r Jackson; 9. Geo. B. Smith; 10. Mich'l R. Coombs; 11. Edgar H. Bates; 12. W. A. Kennedy; who being duly empanelled, and sworn to say the truth, and assess the damages of and upon the premises aforesaid, upon their oath do say, that the said defendant is indebted to the said plaintiff in the sum of five thousand dollars, lawful money, with interest from the first of December, 1851, according to the terms, true intent and meaning of the agreement set forth in the first count of the amended declaration.

And on the 4th count of amended declaration for extra work, return to the court the following inquisition, to wit:

Inquisition on 4th Count for Extra Work.—Damages $1,136 23½.

This inquisition, made, indented and taken at the bar in the circuit court of the District of Columbia, at the October term, 1857, of the said court, in an action of debt there depending between Zepheniah Jones, plaintiff, and Ann R. Dermott, defendant, witnesseth, that we, the jurors, whose names are subscribed, and seals affixed hereto, being duly empanelled, sworn and charged to inquire of the damages sustained by the said plaintiff in the said action by reason of the several causes of action in the fourth count of the declaration of the said plaintiff mentioned, having heard the

evidence given in said action, and duly considered the same, do find and assess the damages sustained by the said plaintiff in the said action to be the sum of eleven hundred and thirty-six dollars and twenty-three and a half cents, with interest from April 5th, 1852, and the costs of the said suit.

In witness whereof, we, the said jurors, have hereto set our hands and seals this thirteenth day of November, 1857.

J. A. KENNEDY, [SEAL.]
EDGAR H. BATES, [SEAL.]
DAN'L BARRY, [SEAL.]
WM. P. DRURY, [SEAL.]
GEO. B. SMITH, [SEAL.]
MICHAEL R. COOMBS, [SEAL.]
ALEXANDER JACKSON, [SEAL.]
THOS. RIGGLES, [SEAL.]
JOHN SHAW, [SEAL.]
G. D. SPENCER, [SEAL.]
THOS. FITNAM, [SEAL.]
W. A. KENNEDY. [SEAL.]

Inquisition to 3*d Count.—Damages* 1 *Cent.*

And inquisition as to 3d count, as follows, to wit:

This inquisition, made, indented and taken at the bar in the circuit court of the District of Columbia, at the October term, 1857, of the said court, in an action of debt there pending between Zepheniah Jones, plaintiff, and Ann R. Dermott, defendant, witnesseth, that we, the jurors, whose names are subscribed, and seals affixed hereto, being duly empanelled, sworn and charged to inquire of the damages sustained by the said plaintiff in the said action by reason of the several causes of action in the third count of the declaration of the said plaintiff mentioned, having heard the evidence given in said action, and duly considered the same, do find and assess the damages sustained by the said plaintiff in the said action to the sum of one cent, and the costs of the said suit.

In witness whereof, we, the said jurors, have hereto set our hands and seals this 13th day of Nov., 1857.

J. A. KENNEDY, [SEAL.]
MICHAEL R. COOMBS, [SEAL.]
EDGAR H. BATES, [SEAL.]
DANIEL BARRY, [SEAL.]
WM. P. DRURY, [SEAL.]
G. B. SMITH, [SEAL.]
ALEXANDER JACKSON, [SEAL.]
JOHN SHAW, [SEAL.]
THOS. FITNAM, [SEAL.]
THOS. RIGGLES, [SEAL.]
G. D. SPENCER, [SEAL.]
W. A. KENNEDY. [SEAL.]

Inquisition as to 2d Count.—Damages 1 Cent.

And inquisition as to 2d count, as follows, to wit:

This inquisition, made, indented and taken at the bar in the circuit court of the District of Columbia, at the October term, 1857, of the said court, in an action of debt therein depending between Zepheniah Jones, plaintiff, and Ann R. Dermott, defendant, witnesseth, that we, the jurors, whose names are subscribed, and seals affixed hereto, being duly empanelled, sworn and charged to inquire of the damages sustained by the said plaintiff in the said action by reason of the several causes of action in the second count of the declaration of the said plaintiff mentioned, having heard the evidence given in said action, and duly considered the same, do find and assess the damages sustained by the said plaintiff in the said action to the sum of one cent, and the costs of the said suit.

In witness whereof, we, the said jurors, have hereunto set our hands and seals this 13th day of Nov., 1857.

J. A. KENNEDY, [SEAL.]
MICHAEL R. COOMBS, [SEAL.]
EDGAR H. BATES, [SEAL.]
GEO. B. SMITH, [SEAL.]
WM. P. DRURY, [SEAL.]
ALEXANDER JACKSON, [SEAL.]
DANIEL BARRY, [SEAL.]
JOHN SHAW, [SEAL.]
THOS. RIGGLES, [SEAL.]
THOS. FITNAM, [SEAL.]
G. D. SPENCER, [SEAL.]
W. A. KENNEDY. [SEAL.]

Judg't.

Therefore it is considered by the court here that the said plaintiff recover against the said defendant as well the sum of five thousand dollars, lawful money, with interest from 1st Dec'r, 1858, his damages aforesaid by the jurors aforesaid in form aforesaid assessed by reason of the premises set forth in the *the* first count of his declaration, as also the several sums of money, his damages aforesaid by the inquisitions aforesaid in form aforesaid found, and also the sum of two hundred and one dollars and sixty cents by the court now here adjudged unto the said plaintiff for his costs and charges by him about his suit in this behalf expended, and the said defendant in mercy, &c.

Test: JNO. A. SMITH, *Cl'k.*

Memorandum.

Before the jurors aforesaid retired from the bar of the court here, the said defendant, by her solicitor aforesaid, filed in court here the following bill of exceptions:

Def't's 1st Exception.

JONES vs. DERMOTT. } Defendant's 1st Exception—Plaintiff's Statement of Evidence.

On the trial of this cause the plaintiff, to maintain the issues on his part, joined upon the first count; and for the taking of the inquisitions upon the other counts in the declaration, offered and gave in evidence, without objection, the certain contract mentioned in the declaration, with the specifications annexed thereto, and forming part thereof, and proved that the same were duly signed and sealed by the pl'ff and deft., as they purport to be, which are as follows, (copied on page .)

And further gave evidence, that the plaintiff did diligently and faithfully proceed in the execution of the work specified therein, and did in fact finish and make ready for use and occupation, and did so deliver over to the defendant the three stores and warehouse mentioned in the contract on or about the 4th day of December, 1851; and that the said stores and warehouse would have been completed by the 1st day of October, 1851, but for certain changes and alterations and departures from the contract and specifications aforesaid, made and required by the said defendant, and involving additional work and considerable delays from time to time; and also gave evidence that a further cause of delay occurred by reason of the sinking of the earth foundations under a portion of the walls of the said building; and, respecting the said earth foundations, gave evidence that the same were dug out in accordance with the requirements of the said specifications, and under the inspection and direction of an architect and superintendent employed by the defendant for the purpose of seeing that the said contract was faithfully executed; and that the same were excavated as low as the mouth of the sewer mentioned in the specifications would admit; and that the trenches for the stone footings of the walls were dug out three inches below the excavation of the cellar; and that the said excavation, when so made, revealed apparently sound and perfect earth foundations of yellow clay; that the same were carefully examined by the said architect and superintendent, and were approved by him, and were also examined by the plaintiff, and by other persons, and were tested with a crowbar by the carpenter and builder who was superintending and contracting the work for the plaintiff, and that there was not the slightest indication of any defect in the same; that afterwards, and while the building was progressing, the defendant required a stack of hanging chimneys, not embraced in the contract, of great weight, to be suspended upon one of the walls, and also required the walls to be higher than specified in the contract; and that defendant was cautioned by her said architect, as well as by the plaintiff, against increasing

the weight of the said walls, lest the same might occasion the earth foundations to give way or settle, but she replied that she would take the responsibility, and accordingly her requirements were carried into execution; that thereafter the said wall sank between four and five inches at its extremity, carrying with it certain dependent walls; that the plaintiff reconstructed and repaired the said wall, and that the cost thereof is charged in the bill of extra work referred to in the declaration at $; that thereafter the said wall sunk and settled again at the same point, so that its greatest depression was about 8¼ or 8½ inches; and further gave evidence that the said walls were built and constructed in a good, faithful, and workmanlike manner, and that the sinking thereof was not in any degree attributable to defect of work or materials, but was solely owing to a latent defect in the earth foundation not discernible or in any degree indicated when the foundation was laid; that the walls stood firm except at and adjoining the spot where the aforementioned greatest depression took place; and further gave evidence tending to show that it appeared by subsequent developments that below the yellow clay foundation above mentioned there was a deposit of blue marsh mud—the crust of yellow clay being some feet thick at a central point and diminishing in thickness in a wedge-shape until it was only about 6 inches thick at the point where the wall sunk 8½ inches as aforesaid; that the said wall sunk or settled gradually in a right line from its western extremity, where it stood firm, to its eastern terminus, where its said greatest depression was, and that it had reached its greatest settlement in the month of December, 1851, and found its bearing.

And further gave evidence to show that the said stores and warehouse were completed and delivered over, finished and ready for use and occupation, within a reasonable time after the said 1st day of October.

And further gave evidence, tending to show that the extra work mentioned in the bill of particulars was done by the pl'ff at the special instance and request of the defendant, and that the same was reasonably worth the prices and sum charged therefor.

And it further appeared on cross-examination of the plaintiff's witness by whom the above facts were given in evidence, that after the first settlement of the walls the plaintiff undertook to reconstruct the said walls, upon a promise by said witness (who was the architect and superintendent of the def't) that the defendant would no doubt compensate him for the cost of such reconstruction; but the said witness also testified that he had no authority from said defendant for making such promise, other than the general authority originally reposed in him by the defendent to superintend and see that the contract and specifications were faithfully carried out by the plaintiff; and the same witness also testified, that after such

reconstruction, and before the plaintiff had delivered over said stores and warehouse, and while the same was in charge of the plaintiff, a second settlement of said walls and the foundation thereof took place as hereinbefore related, which the plaintiff did not undertake to repair or reconstruct, but left the building with the walls sunken in fact to the depth of 8½ or 8¼ inches, and the plaintiff thereupon rested.

The defendant then, to maintain the issues on her part and to reduce the damages claimed by the plaintiff, read in evidence to the jury two letters written by the plaintiff to the defendant, dated 4th Dec., 1851, and 5th April, 1852, made a part hereof, (copied on page); and further gave evidence by various witnesses, who testified that in May, 1852, and shortly after the plaintiff had left the premises, the building erected by him, and for which he claims compensation in this suit, was found in a dilapidated, ruinous and falling condition, unsafe and unfit for use and occupation; that such condition was the effect or consequence of the settlement or sinking of a portion of the store foundations, on which the brick walls of said warehouse and stores rested; that the earthen foundations on which said store and brick walls rested were found to be in a miry and infirm condition from the floods of water which was lying in considerable quantities in and about the earthen foundations of said buildings, and the walls had (in the opinion of experienced and competent architects and builders who examined the same) settled and sunk in the earth, because of its being softened by the flowing in of large quantities of water; that said water was found under the kitchen floor, and in various other portions of the basement floors, and appeared to be most accumulated at the points where the walls had sunken the most. And the defendant further proved, by various witnesses, that there was no sufficient or adequate drainage of the floors and foundations of said three stores and warehouse, as constructed by the plaintiff, but that water during a heavy rain was seen running into the foundations of said building in large quantities, especially from a down-spout, which emptied in the gutter over the arch as constructed by the defendant; that said down-spout had neither an elbow nor dish-stone to slant or receive the water descending through the spout, but there was a flag stone under the spout, which, in the opinion of experienced and competent architects and builders, was improper and unsafe, inasmuch as the water descending through the spout ought to have been carried off horizontally by an elbow at the base of the spout, emptying into a dish-stone and not a flag stone, and that water falling on a flag stone will run off all around it and settle under the bed of the stone, so as ultimately to form a hole under the stone, which will continue to deepen under the action of the water; that in fact the water from said down-spout had broken or worn through the crown of the arch, which had settled at that point,

admitting into the basement floor a large current of water when it rained. The def't also gave evidence by various witnesses to show that the building as constructed by the plaintiff was otherwise defective in respect to drainage of water flowing into or about its foundations from other sources, because the earthen floors were lower than the area pavement around said building, and that pavement was also lower than the mouth of the sewer opening into the area wall, into which sewer all the water flowing from the roof of said building, or otherwise coming on the earthen floors of said building, was intended to and could only flow for an outlet, and that said water could only reach said outlet by overflowing in the basement of said building, and on the area pavement to a height sufficient to run off through the opening into the sewer, the mouth of which was from 3 to 5 inches above the said area pavement, as found by the witnesses of the defendant, after the plaintiff had abandoned said building; that the defective, insufficient and unskilful drainage of the basement of said stores and warehouse, and the accumulation of water as found in and about the foundations of the walls, was in itself a sufficient cause for the sinking and settlement of the walls, however perfect and sufficient the substratum of earth may have been.

The def't further gave evidence by several witnesses to show that the work done by said pl'ff in and about said warehouse and stores was unskilfully and improperly done, both in respect to the inferior character of materials and the unworkmanlike manner in which the same was constructed, and especially in the construction of the store wall, carrying iron columns as described and required in the within specifications, and which store wall was put up by the plaintiff in an unskilful and unworkmanlike manner, with inferior stone, and by setting the stone on their edges and not laying them flat on their beds, as it was proper to do in a wall of that description, especially when intended to support iron columns, and also that the iron columns were improperly and unskilfully set on said wall, without sufficient iron plates and capstones of suitable thickness being provided at the base of said columns, and in consequence of said defects in the construction of said last wall and the placing of the columns thereon, the said wall split and bulged out and said iron plates and capstones cracked and broke.

The defendant also gave in evidence that the plaintiff had deviated from the specifications aforesaid in not constructing a portion of the area walls of the required thickness, and the same had to be reconstructed by the defendant in order to the erection of the front steps at the point named in said specifications, and also in not extending the same and bringing it to a point directly under the front steps as provided in said specifications, but instead of so doing, the plaintiff directed the drainage of water coming into the foundation of said building to the mouth of the sewer, as used and connecting with an old building standing on the same site prior

to the execution of said contract, and which building the plaintiff took down and removed, as required in said contract.

And the defendant also gave in evidence that the reason why plaintiff did not so extend the sewer, was because it came obliquely to the area wall, and the plaintiff alleged that if he extended it to that point it would deprive the area wall of their required thickness; but the defendant gave in evidence that *if* the plaintiff could have so extended the said sewer from a point sufficiently far back in its oblique direction to have enabled him to construct the area walls of the required thickness.

The defendant also gave in evidence to show that in consequence and by reason of the insufficient drainage and defective and unskilful workmanship of the plaintiff, the walls and stone foundations at various points sunk and settled in the substratum of earth on which this was built, to an extent in part thereof of at least 13 inches; such settlement caused great and serious injuries to the whole superstructure, by reason of the numerous and large fissures in the brick walls on 7th street bulged or inclined outwards, and was in imminent danger of falling into the street; that the roof of the building from such bulging and settlement was also in a dangerous condition, and the same had been forced to the edge of a slip, on which it hung by only an eighth of an inch.

The defendant gave in evidence that the said stores and warehouse were left by the plaintiff in the dangerous and untenantable condition above described, and that the plaintiff after the said first settlement of the walls, and also after the second settlement, declared that he would make it all right before he gave up the building to defendant; and further proved that $422 of the extra work claimed by the plaintiff in the bill of particulars filed under his fourth count is charged for and on account of the plaintiff's attempted reconstruction of said walls after their first settlement as aforesaid. And thereupon the defendant, for the purpose of recovering, against the plaintiff's said claim, the damage which she had sustained by reason of the non-performance of the contract aforesaid on the part of the plaintiff, offered to give in evidence by a competent witness that the plaintiff wholly omitted to erect and furnish the front steps to the residue or boarding-house part of said building as specified in the said within specifications; and the defendant did erect and furnish the said steps at a large cost to her, and she also proposed to prove by the same witness the amount of such cost to her, but the court refused to allow the defendant to give said evidence as so offered by her, or any part of it; and thereupon the defendant excepts, and this her bill of exceptions is signed, sealed, and enrolled this 5th of November, 1857.

JAS. DUNLOP, [SEAL.]
JAS. S. MORSELL, [SEAL.]
WM. M. MERRICK. [SEAL.]

Def't's 2d Exception.

2d Exception.

On the trial of this cause, in addition the evidence contained in the aforegoing exceptions made in part hereof, the defendant having given evidence by R. Snowden Andrews to prove that a well was dug on the premises in suit for the purpose, if possible, of draining the water found or which might accumulate in the foundations of said buildings, or the spring of 1852; and the said Andrews having given evidence to show that the said well was dug to a depth of 15 or 18 feet, when a strong stream of water was struck which rose to its surface and overflowed through a drain made to the sewer connected with said premises; one of the judges of the court then inquired of said witness what the elevation of the bottom of said well from the level of the river; thereupon the said witness stated that the mouth of said well was only two or three feet above the level of said river, and the earth through which it was dug had the appearance of made or alluvial deposit, and the water so struck at the lowest depth may have been percolations from the river. The defendant's counsel, with a view to rebut said evidence so elicited by the inquiry of the court, and to show that a much larger building was erected and still stands in the vicinity of the premises upon ground of the same description as that found on the premises in dispute, and that said ground on which said building was erected is as low as that in dispute and nearer to the river, proposed to ask said witness what was the distance of Browns' Hotel, in the city of Washington, from the said river and from the premises in dispute, and what was the comparative elevation of the site of said hotel as compared with that of the defendant's said building and relatively to the level of said river, the defendant's counsel at the same time declaring that he meant to produce evidence to show that said Browns' Hotel was much nearer to the said river, and placed on ground much lower than the building of the defendant, and on ground of a similar description, and though a larger building than that now in dispute, and that said Browns' Hotel had stood securely for many years on its said site, which is only a short distance from that of defendant's building; which testimony being objected to, the court refused to allow said offered evidence to be given as proposed for the purpose aforesaid, and the defendant excepts, and this, his bill of exceptions, is signed, sealed, and enrolled this 5th day of November, 1857.

JAS. DUNLOP, [SEAL.]
W. M. MERRICK. [SEAL.]

Def't's 3d Exception.

3d Exception.

After the evidence stated in the aforegoing exceptions, made a

part hereof, had been given, the defendant further gave in evidence that, after the plaintiff had left her said building, and after the date of his said note of the 5th April, 1852, and some time in May, 1852, she employed a skilful and competent architect and builder to examine said building, and to repair and reconstruct the same, so far as necessary and proper to make the same tenantable, and fit for use and occupation; and that the said architect and builder did, in a faithful, diligent, and skilful manner, repair and reconstruct all the damage done to said building, consequent on the sinking and settlement of the walls of the warehouse and three stores as aforesaid, and that the cost of such repairs and reconstruction to the defendant was $10,000 and one hundred dollars; and such cost was the fair value of the said repairs and reconstruction, and was bona fide made and incurred in and about said repairs and reconstruction; and there the defendant rested.

And thereupon the plaintiff gave evidence, rebutting and contradicting all and singular the evidence so as aforesaid adduced on the part of the defendant.

The defendant then prayed the court to instruct the jury as follows:

(Defendant's Prayers, copied on pages 121, 122, 123, 124, &c.)

But the court rejected the said prayers, and each of them, as presented; but granted the prayer No. 4, as prayed, and also said prayers Nos. 1 and 3, with the qualification thereto attached. And thereupon the defendant excepts, as well to the refusal of the court to grant each of said prayers Nos. 1, 2, 3, and 5, as prayed by the defendant, as to the granting of the said prayers Nos. 1 and 3, with the qualification thereto attached as aforesaid, and claims the same benefit of exception as if the refusal to grant each and every of said prayers so refused, and the granting of said prayers Nos. 1 and 3, with the qualification aforesaid, were severally and respectively excepted to by separate bills of exception. And thereupon this, her bill of exception, is signed, sealed, and enrolled, this 12th day of November, A. D. 1857.

JAS. S. MORSELL, [SEAL.]
W. M. MERRICK. [SEAL.]

4th Prayer of the Defendant.

Defendant's 4th Prayer. (Granted.)

If the jury find, from the evidence aforesaid, that the plaintiff so negligently and unfaithfully executed the work specified in the contract and specifications aforesaid, that, from insufficient drainage, bad workmanship, departure from the written specifications, or other acts or omissions of the plaintiff, in so negligently and unfaithfully executing said work, the three stores and warehouse aforesaid were damaged and injured, as stated in the evidence, then

the defendant is entitled to recoupe or deduct from the amount claimed in this action all damages sustained by the defendant and resulting from said injury.

Def't's 5th Prayer.

Def't's 5th Prayer.

That, under the issues joined on the first count of the amended declaration, the defendant is entitled to the verdict, unless the jury shall find, from the evidence, that the plaintiff did finish and deliver over to the def't the three stores and warehouse described in said written contract, ready for use and occupation, on or before the first day of October, A. D. 1851.

Rejected.

Def't's 2d Prayer.

Defendant's 2d Prayer.

That, by the true intent and meaning of the written contract and specifications read in evidence, the said Zepheniah Jones undertook and obliged himself to finish the three stores and warehouse therein described, and deliver them over to the defendant, fitting for use and occupation, on or before the first day of October, 1851; and the said Jones also undertook and obliged himself to procure and supply all and singular the materials, implements, fixtures, matters and things requisite and proper for the execution of said and for the complete finishing and fitting for use and occupation of said warehouse and stores. And if the jury find that the said warehouse and stores, when delivered over by said Jones to the def't, were not fitting for use and occupation, but the same were defective, unsafe, and untenantable, by reason of the cracking of parts of the walls and the settlement of portions of the store walls, or otherwise; and if the jury further find that it was possible for said Jones to have constructed said warehouse and stores, and to have delivered the same to the defendant fitting for use and occupation, by his furnishing additional labor, materials, matters and things, (not named in said written specifications,) in and about the fitting of the same for use and occupations, then the said Jones did not perform and discharge the obligation of his said contract, although the jury may believe that the said warehouse and three stores were erected and constructed in strict conformity to the specifications made a part of said contract; and although the cracking of said walls and settlement of said foundations may have resulted from causes wholly unforeseen by either party at the time of executing said contract and constructing said foundations and walls; and although the said cracking and settlement may have been caused by the weight placed on said walls and foundations, or some part thereof, according to the requirements of such specifications, or of additional weight placed on the same or some part thereof by said

Jones, at the request of said defendant, and which additional weight was not called for in said specifications; but the court further instructs the jury that the plaintiff is entitled to recover nominal damages at all events.

Refused.

Def't's 1st and 3d Prayer, with the Qualification.

Prayer No. 1.

And thereupon the defendant prayed the court to instruct the jury, as follows:

If the three stores and warehouse in the contract mentioned were not executed and finished, fit for use and occupation, and so delivered to defendant, either on the said first day of October, 1851, in the said contract mentioned, nor at any other time, but were, at the time the same were delivered, wholly unfit and unsafe for use and occupation, with walls, or some of them, sunken out of plumb and cracked and in danger of falling, so as to be utterly untenantable and unfit for use and occupation, then the plaintiff was not entitled to demand and recover in this action the said sum of five thousand dollars, as the stipulated instalment which the said contract purports to make payable on the said 1st Octo., on the terms and conditions therein mentioned, but the plaintiff is entitled to recover the value of his said work, after deducting the cost and expense incurred by the defendant in repairing said stores and warehouse and rendering them fit for use and occupation, but the plaintiff is entitled to nominal damages, at all events.

Def't's 3d Prayer.

If the defendant did not at any time or times whatever, execute, finish, ready for use and occupation, and in that state and condition deliver over to the defendant the said stores and warehouse mentioned, but delivered the same over to the defendant in a state wholly unsafe and unfit for use and occupation, and untenantable, with walls sunken, cracked and out of plumb, and in danger of falling into ruin, whereby the defendant was greatly injured and suffered great loss, by having to reconstruct the said walls in part, and repair the dilapidated condition of the building, and fit it for use and occupation at her own costs and charges, then the defendant may recoupe or deduct said losses, costs and charges against the plaintiff's claim for the said instalment of five thousand dollars, claimed in this suit, or the value of the work done by said plaintiff in and about said stores and warehouse, but the plaintiff is entitled to recover nominal damages, at all events; which instructions the court refused to grant without the following qualification, that is to say:

Qualification.

But if the jury shall find from the evidence that the said Jones

hath executed the said work according to the specifications forming a part of the said contract, and in a skilful, diligent, and careful and workmanlike manner, or that his execution thereof was with the knowledge and approbation of the defendant, then they are to find for the plaintiff the said sum of $5,000, with interest from the date of the delivery of the said stores and warehouse.

To the granting of which instructions the plaintiff excepts, and prays the court to sign and seal this his bill of exceptions, which is accordingly done, this 11th day of Nov., 1857.

JAMES S. MORSELL, [SEAL.]
WM. M. MERRICK. [SEAL.]

To the refusal of which instructions, as prayed by the defendant, to the granting of the qualification annexed thereto, the defendant, by her counsel, excepts, and claims the same benefit of exception as if the refusal of the court to grant *to grant* each of said instructions as prayed, and the granting of the same with the qualification thereto attached, were each separately excepted to, and thereupon this her bill of exceptions is signed, sealed and enrolled, this 11th day of Nov., 1857.

JAMES S. MORSELL, [SEAL.]
WM. M. MERRICK. [SEAL.]

Letter from Zepheniah Jones to Miss Dermott, referred to in Defendant's 1st Exception, page 108.

WASHINGTON, *Dec. 4th*, 1851.

Miss ANN DERMOTT.

MADAM: After having waited several days to see you on the subject, I hereby inform you that the three stores in the south front of your building are ready, and have been ready some days, for occupancy, and that the store and warehouse on 7th street will be ready also to-day or to-morrow. You can, therefore, at once take possession, and I am ready to give up the keys.

Very respectfully, &c.,

Z. JONES.

Letter from Zepheniah Jones to Miss Dermott, referred to in Defendant's 1st Exception, page 108.

Miss ANN R. DERMOTT.

MADAM: I am ready to deliver the keys of your building to you, or any person that you may name.

Yours, Z. JONES.

April 5th, 1852.

Articles of Agreement referred to in Defendant's Pleas, page 29.

The articles of agreement made on the twenty-second day of April, in the year one thousand eight hundred and fifty-one, be-

tween Zepheniah Jones, of the city of Washington, mason and house-builder, of the one part, and Ann R. Dermott, of the same city, of the other part, witnesseth, that the said parties have mutually cevenated and agreed, and by these presents do mutually covenant and agree together, each with the other, in manner and form following—that is to say, that he, the said Jones, shall and will well and faithfully do, perform and execute in good, substantial and workmanlike manner, and in a neat style of finish, such as is proper to the sort and kind of work in its various details, all and singular the houses, buildings, and work of every sort and kind described and specified in the schedule hereto annexed and marked A, and which, together with all its appendages and details, is to be taken and regarded as part and parcel of these articles of agreement, being authenticated by the signatures of the said parties, and the attestations of the same witnesses as these present, comprehending all the work and labor of every sort necessary and proper for the pulling down and removal of the houses and buildings standing, or lately standing, on the lot referred to in the said schedule, and for the removal and clearing off all the old materials and rubbish, and for the rebuilding and completion of the new houses and buildings to be erected on said lot according to the specifications of said schedule.

That he shall and will also procure and supply, or cause to be supplied and procured, all and singular the materials, implements, fixtures, matters and things requisite and proper for the execution of the said work in all its parts and details, and for the complete finish and fitting for use and occupation of all the houses and buildings, and the several apartments of the houses and buildings, to be erected pursuant to the plan of the works described and specified in the said schedule; that the said work and works, and the several parcels and parts thereof, shall be executed, finished, and ready for use and occupation, and be delivered over so finished and ready, to the said Ann R. Dermott, at the time and times following—that is to say, the three stores described in said schedule, as fronting on market space, and the warehouse on 7th street, on or before the first day of October next, and all the residue of the said work on the first day of December next, and that he shall and will forthwith prosecute and carry on the said works with all diligence and practicable expedition.

That the said Ann R. Dermott, in consideration of the covenants and agreements on the part and behalf of the said Jones to be performed and executed as aforesaid, and of the due performance and execution of the same, and in full payment and satisfaction for all the work and labor aforesaid, and for all the materials, implements, fixtures, &c., to be by him procured and supplied as aforesaid, shall well and truly pay him the full and just sum of twenty-four thousand dollars, by the instalments and at the time

and times following—that is to say, five thousand dollars on the first day of July next; the further sum of five thousand dollars on the first day of October next; the said stores and warehouse being then finished and ready for use and occupation, and delivered over as above mentioned and agreed on, and the residue of the said sum of twenty-four thousand dollars, to wit, fourteen thousand dollars on the first day of January, A. D. 1860, with interest as follows—that is to say, four thousand dollars, part thereof shall bear interest from the first day of May next, and the residue from and after the complete execution, finish and delivery of the said work on the first day of December next; and all such interest shall be paid quarter-yearly—that is to say, one-fourth part of the yearly interest shall be paid at the expiration of every quarter of a year from and after the time when the same shall begin to run; that on the complete execution, finish, and delivery of the said work on the first day of December next as aforesaid, she, the said Ann R. Dermott, shall give her bond to the said Jones for the due payment of the said sum of fourteen thousand dollars, payable on the said first day of January, in the year 1860, and the interest payable as aforesaid, and shall also give collateral security for the same in and by a deed of trust upon the property on which he has agreed to execute the works specified in said schedule, in which deed there shall be inserted among the other matters usual and proper in such instruments, a clause empowering and requiring the trustee in such deed named to collect and receive from any tenant or tenants of the said premises every such portion or instalment of said interest as shall be and remain unpaid and in arrear for the space of twenty days after demand and refusal of the same; and as a still further security for the said sum of money and interest, that the same shall constitute and remain a good and valid lien on all the said property, according to the provisions of the act of Congress in such case provided; but no such lien shall exist, or be or inure to the benefit of any person or persons whatsoever other than said Jones, his executors or administrators, under any pretence of work or labor done or materials supplied by his procurement for the execution of his contract and agreement aforesaid, and he shall make all his contracts for such work, labor and materials, on his own individual and personal account and credit, and so as to forefend all claims on the part of any person but himself to any lien or liens on said property.

In witness whereof, the parties aforesaid have hereto set their hands and seals the day and year aforesaid.

ZEPHENIAH JONES, [SEAL.]
ANNE R. DERMOTT. [SEAL.]

Witness—
WALTER JONES,
JOHN C. HARKNESS.

I hereby certify that I have carefully compared this copy with the original contract and find it correct.

October 15th, 1851.

JOHN C. HARKNESS.

Sched. A.

Specifications constituting the Schedule A referred to in the aforegoing articles of agreement, for the erection of certain brick buildings on lots numbered one and twelve, in square numbered 432, in the city of Washington, for Miss Ann Dermott.

Removals.—Every part of the old brick buildings to be removed, except the west wall, which forms the party wall of the adjoining house, and such of the stone foundations as are conformable to the accompanying plans; no portion of the old material, or manufactured portions of the old building, to be used again in the construction of the new buildings, except the brick foundation stone; the marble mantels, soapstone jambs, and backs to fire-places, two grates, and such of the freestone window-sills as are perfect to be used to the back windows.

Excavations.—The corner lot and the alley to be dug out to an average depth of 7.11 below the grade of the pavement at the building line south front, (provided the bottom of the sewer will admit of it,) to be so graded that the water from every part of the floor shall drain to the sewer; the excavations of the vaults and area to be made to conform with the grade of the cellar, so as that all shall drain to the sewer; the cellar under the warehouse to be dug out to an average depth of 7.10½ below the grade of the pavement, at the centre of the front, at the building line, and to be so graded as to drain the water to the sewer. The area to the warehouse to be dug out 8 feet deep; trenches for the new foundations to be dug out 3 inches below the bottom of the cellars; all the earth to be carted from the premises, and all the offal from the old buildings also.

Brick-work.—The dimensions, arrangement, and number of brick walls are laid down upon the accompanying plans, which plans are to be regarded as a part of their written specifications, except in so far as said plans may be modified by their written specifications. The south and east walls of the corner house to be 2 brick thick up to the first floor of joist; the east wall from thence up to the second floor of joist 2 brick thick; from thence up to the square, as also the south wall, 1½ brick thick; the basement south and east wall up to the granite water-table to be faced with good red brick of a uniform color, and from the water-table up to the cornice to be faced with best quality Washington front brick, (or their equivalent,) laid in neat tucked joints, oiled and penciled. The main division wall to be 14 brick thick up to the first floor of joists; from thence up to the raising floor of joists 1½ brick

thick; the wall along the south side of the alley to be 18 inches thick, (and to project 4½ inches into the vault for the support of the arch,) as high as the first floor of joists; from thence up to the second floor of joists 14 inches thick; the walls on the west, above the skylight, to be 9 inches thick, faced with red brick, and finished with a plain four-course brick cornice; the cross wall in the cellar, dividing the stores from the kitchen, to be 9 inches thick, starting from a 14-inch footing of 4 courses, and to finish even with the top of the first floor of joists. The east wall to be arched over the alley, as per drawing, to unite with the warehouse, and to finish the same as described. The west wall over the alley to be arched at the same height as the front, to be 9 inches thick, and to finish with a plain brick cornice, even with the third floor of joists; the main division wall to be arched over the alley on 3 bars of iron 2½ in. x ¾ bent, to suit the curved of the arch, and turned up at the ends to prevent spreading; the main west wall to be arched over the alley in the same manner, even with the ceiling of the second story, on two bars; all the chimneys and flues to be constructed upon the most approved plan to prevent smoking; the flues to be 14 x 14 in all, well paegetted and capable of being *sweeped* to be taped out 3 feet above the cone of the roof; the swinging chimneys to be supported by trimmer arches laid on 4 iron bars to each, of 2 x ½ inch, curved and lapped into the joist; the fire-places to be cased, and hearths laid with front bricks; the kitchen hearths to be laid of best paving brick, on very strong Susquehanna slate, bedded in cement on the top of the stone pavement, to be 2 feet wide from the buaist and even length with the chimneys; the fire-place to be provided with a suitable iron crane and arch bar; the front cornice to be of full trimmed, moulded brick, to extend the entire lengths of the east and south fronts, with returns at each terminus, formed of cast iron. The brickwork of the warehouse to commence for the outside wall even with the bottom of the first floor of joists, to be 18 inches thick up to the top of the second floor of joists, and from thence up to the square 14 inches thick; the first story to be so graduated as to keep the second floor on the same level with second floor of the corner house, observing to set the top of the north sill 3 inches above the grade of the pavement; the front wall and the north and south walls, as far as the depth of the corner house goes, to be carried up the same height of the corner house; the rest of the south wall to finish even with the top of the fifth floor, with a plain four-course cornice, and the north wall carried up 3 feet for the pitch of the roof 9 in. thick; the dividing walls in the cellar, as shown on the plan, to be 9 inches thick, starting from 14½ footings 4 courses high, and to finish with the top of the first floor of joists; 4½ inch piers to be constructed, 2½ brick long, on each side of the centre wall, directly under each iron column, with blue

rock footings and caps; the chimneys and flues attached to the warehouse to be constructed and finished before described. The alley to be arched over fom the building line to the west line of the corner lot; the arch to be 9 inches, laid in cement, to rise 1.8 inches, and to be placed as near the surface as is prudent; a communication to be formed, as shown on the plan, by 9-inch walls, with the back cellar of the warehouse. Two strong cast-iron curbs, 15 inches diameter, to be firmly worked into the ceiling of the vault and secured with strong wrought-iron gratings, made portable and fastened on the inside with padlocks and chains. A coal slide to be constructed from the side of the alley into the back cellar of the warehouse, to be cased with even-faced blue rock or N. York flagging, secured with wrought-iron gratings and padlocks and chains. Three vaults in the south pavement, to be 9, 8 x 8.0 in the clear; the front side and division walls to be 9 inches thick; the back wall 14 inches thick; the arches to rise 18 inches, and to be 9 inches thick, brought up as near to the surface as is prudent; to be laid in cement mortar. Each vault to have a cast-iron curb firmly worked in the arch, with close cast-iron covers, fastened as before described. The backings of all the vaults to be of clay puddling. A drain to be constructed of brick laid in cement, 18 inches wide on the bottom, open at the top, as deep as the sewer will allow, to pass from the space under the skylight along the division wall in the kitchen, under the floor, to the front area.

The areas and vaults in the south pavement to be paved with best quality paving brick, and so graded as to lead the water to the sewer. The cellars of both houses and the vault under the alley to be paved with stone similar to that used on Pennsylvania avenue, in coarse sand and gravel, sufficient to produce the grades required, and to be solidly rammed. The sewer to *be* extend and brought with an easy curve to the face of the area wall, directly under the front steps, and the mouth to be secured by a hinged iron grating. The space under the skylight to be paved with best paving brick, and graded so as to drain the water into the drain before described. A brick sewer, to be laid in cement, 6 x 6 in the clear, from the privy to the front sewer; and that portion of the sewer which passes over the vault under the alley to be of 6 in. cast-iron pipe, leaded at the joints to prevent leakage; a connecting drain to be brought from the back down-spout into this sewer.

A privy to be built on the west line of the warehouse lot, 18 ft. 6 inches long x 6.0 ft. broad outside of the walls; the walls to be 9 inches thick, starting from blue rock footing, 1.6 x 1.6, to be 18 feet high from the footings to the square, the roof to rise 9 inches. An additional privy of the dimensions of one of the divisions to be built one story high only. The privies to be connected with the warehouse by a similar wall and footings as described for the privy,

to be of even height with the privy, and coped with brick laid in cement.

The back yard of the warehouse to be paved with stone. The alley to be repaved from the west line of the vault to the gutter at 7th street. The entire front line of east and south fronts to be paved with best quality paving brick on 6 inches of coarse sand brought to the right grade. Neat jack arches over all openings in walls, faced with *read* brick; dead arches turned whenever necessary for strength. The north line of the lot behind the warehouse and the return to the privy to be enclosed by a brick wall 8 ft. 6 in. high from the bottom of the foundation to the top; to be 9 in. thick, with 14 in. footings 18 in. high, and coped with brick laid in cement.

A drain 6 x 6 in. to be made of brick laid in cement, to conduct the water from the area of the warehouse into the area of the corner house, (carried along against the east end of the vault under the alleys.) The west party wall to be built upon of its present thickness, and brought up to the height required by the plans. The gable peaks to be 9 inches thick, cut up under the slate, and finished with a two-course barge. Foundations to the front entrance steps put up in the best manner. The old brick to be properly cleaned, and such as are fit to make a good and substantial job to be used again; the *ballance* necessary to complete the building to be of the best quality merchantable all hard brick; no *sammon* to be allowed in any part of the building, nor any of the dry-pressed bricks. The mortar to be made (except where cement is before specified) of the best guality wood-burnt Potomac lime, and all sharp sand, in due proportions. The contractor to furnish all the necessary scaffolding.

Stone-work.—All the area walls to be built of best quality blue rock, laid in cement mortar, 18 inches thick, neatly faced and pointed, and brought to the true grade for the reception of the granite coping. The walls under the columns at the skylight to be 22 inches thick, laid in cement mortar, and brought up to the proper height for the columns to set upon, having suitable stone immediately under each column. The footings for that portion of the walls which extends beyond the old walls to be laid in the best manner of blue rock, two feet thick and foot high. The footing for the division-wall to be 22 in. thick and foot high. The footing of the wall along the south side of the alley to be 18 in. thick and one foot high. The walls of the cellar to the warehouse, on the south, west, and north, to be of blue rock, 22 inches thick up to the level of the joists, and the front wall up to the level of the cellar floor. The *ballance* of the front wall of cellar to be of brick 22 inches thick. The foundations to privies and connecting wall to be of blue rock laid in mortar, 18 inches high and 18 inches thick.

Granite-work.—The window-sills to the basement and all other parts of the outside of the building, except for the fronts above the basement, to be of granite, 8 inches broad and 5 inches thick; the top face to be bevelled clear through, and the bottom to be grooved for a water drip.

2 door-sills on the alley, south side.....4.7 long, 12 x 8 in.
2 " warehouse.....5.0 " 15 x 8 "
1 " " .....3.4 " 12 x 8 "
2 " south store front.....6.10 " 16 x 8 "
2 " " " .....9.0 " 16 x 8 "
2 " " " .....6.6 " 16 x 8 "
2 pieces water-table " .....1.7 " 8 x 6 "
2 door-sills, east " .....6.4 " 16 x 8 "
1 " " " .....6.0 " 0 x 0 "
2 " warehouse front.....6.6 " 16 x 8 "
2 " " " .....6.0 " 16 x 8 "
2 pieces water-table, warehouse front.....1.0 " 8 x 6 "
2 platforms, south front.....6.4 " 5.11 x 8 "
1 " " .....6.0 " 5.11 x 8 "
2 " warehouse.....6.6 " 5.11 x 8 "
1 " under front steps, which can made two pieces.....7.6 " 5.9 x 8 "
1 platform to front entrance.....8.6 long, 5.11 x 8, moulded.
7 winding steps to front entrance, the bottom one to have scroll ends .....5.0 " 8 in. rise.
9 straight steps, 5 feet clear of the wall.....13 in. wide, and 8 in. rise, ribited and rounded underside, and securely fastened to the wall.

The front of steps, as far as the windows extend, to have granite panels formed in the granite ashlar; the other two sides for the same distance to have plain granite ashlar; two granite columns, neatly cut, of the Tuscan order, with moulded caps and bars. The whole height, including caps and plinths, to be 9 feet, more or less, and of due proportions. The plinths to be 17 in. x 17 in. x 12 inches.

135 feet of coping to area walls..... 12 in. x 8 in.
10 " " quarter circle, radius 6 ft..... 12 x 8
54 " water-table..... 8 x 6
188 feet, lineal, of curbstone..... 1.6 x 6
9 privy door-sills..... 2.9 x 10 x 6 in.
3 spout stones..... 2.6 x 1.4 x 6 in.

The foregoing dimensions are the net sizes; consequently, on all the work requiring rests in the walls or rabbets, due allowance is to be made therefor, so as to render all the piatforms and steps perfectly secure.

All the granite to be of the best quality Baltimore blue, and all the parts requiring it to be of the best quality fine work. The joints of the coping to be secured by iron clamps imbedded in lead. All the usual and necessary clamps and archers uniting the granite with the brick work to be done in a faithful manner.

New York blue stone.—

1	door-sill,	4.8	long,	15	in. broad,	x 5	thick	Corner basem't.
1	"	6.3	"	15	"	x 5	"	
1	"	3.6	"	15	"	x 5	"	
2	"	4.8 x 12			"	x 5	"	Warehouse.
1	"	3.6 x 10			"	x 4	"	
5	"	3.3 x 10			"	x 4	"	vaults.

The coal slide to be cased on the front and the two ends with N. York stone, 3 inches thick.

The old door-sill and step to be fitted up for a carriage step to main entrance.

Marble-work.—All the front windows, except those in the basement, to have marble sills 5 x 8 in., made as described for the granite; the sills for the side-light windows to be 7 in. thick, and made in one piece. All the windows except the side-light ones to the fronts to have plain marble heads, 8 inches broad, 4 inches thick, and to extend 4½ inches on the brick work each side; the heads and sills to be made of the white marble as used at the Patent Office—best quality. Three new marble mantels to be selected by Miss Dermott, cost, when set complete, not to exceed fifty dollars each. The three old marble mantels to be put up again in the best manner. The front entrance sill 6.4 long, 18 inches broad, and 8 inches thick, of the crystal marble.

Iron-work.—The south store front, and the west wall over the skylight, to have girders of cast-iron of the same description as those used at Mr. Winder's building, omitting the top flange; the girders to the south front to have the bottom flange 13½ in. wide, and the girders at the skylight 9¼ wide.

The south front to have four cast-iron columns, 8 inches diameter at the base, neatly fluted and with handsome caps. The girder at the skylight to be supported by four columns of the same description 7 in. diameter. The store fronts on 7th street to be formed of neat and plain cast-iron posts and girders suited to 14½ walls, and conformable to the plan. A wrought-iron railing enclosing the balcony, and one cross inside division, and also to area; granite platforms and front steps to be of the same style of that at Mr. George Parker's dwelling; the brackets to balcony to be of plain wrought-iron or ornamental castings as Miss Dermott may prefer; the posts to the area railing to be neat cast-iron, 6 in diameter, bolted to the coping.

The space left of the area to warehouse to be enclosed with a

wrought-iron hinged grating, similar that used at Leonard Harbaugh's house, 7th street. Six of the second-story windows north of the main entrance to have handsome cast-iron guards, similar to those in G. R. Gather's house, 13th street; 4 cast-iron columns 7 in. diameter, and 4 do. 6 in. diameter, neatly cast as before described, to be used in the first and second stories of the warehouse. Three cast-iron curbs, with close cast-iron covers, and two do. with wrought-iron gratings, to be worked in the arches of the vaults as before described; a wrought-iron grating to be made to the coal slide, hinged on pivots, and fastened with padlock and chain; four superior irons 2 x 078, of suitable curve, and caps to be used to all the chimneys which are suspended upon trimmers; a wrought-iron grating to the mouth of sewer as before described. The tin spoutings brought to the pavements to have cast-iron terminations.

That portion of the sewer passing from the privies over the vault under the alley to be of 6-in. cast-iron pipe, caulked and leaded, with a branch connection with the back rain pipe; 80 wall irons to be used in connecting the walls; the floors to be distributed in the most judicious manner; snow-irons to be used to all the eaves except to the tin roof. The straps and bolts to the gallows, and forming under the warehouse roof, to be of the usual size and description used for principal rafters. The two old parlor grates to be carefully preserved, with the casings, and reset when the building is ready to receive them; and three new grates, of such pattern as Miss Dermott shall select, the cost for each not to exceed twenty dollars. The returns to the brick cornice to be of cast-iron. The sliding frame to dumb-waiter to be of wrought-iron of suitable dimensions, and hung with sheaves and cords in a complete manner. The arch *barrs* over the alley, described under the head brick work, to be of the best quality iron, and regularly curved, rising the full breadth of the joists. Two iron dowells to be used to each jamb of the door frames, having stone sills; an arch bar and crane provided for the kitchen fire-place, as before described. The flues connected with the stoves to have *to have* a sheet-iron door or slide, made tight and hinged, or made portable, so that a sweep may enter and clean the chimneys. Iron holdfasts put to all the wood mantels.

Hardware.—The wrought or cut nails used to be the best quality. All the blinds to be hinged with Plant's best self-fastening parliaments, with sill-catches. All the doors to be hung with best quality slip butts, to average $3\frac{1}{2}$ x $3\frac{1}{2}$, and in all cases where necessary to be sufficiently broad to swing the door clear of the casings. The door locks in the basement and fifth stories to be of the quality cottage, or lock with best quality dark mineral knobs and bronzed fumature. The door locks in the second story to be best American mortise, with plated knobs and fumature. The third and fourth stories to have the same description of locks, with pearl

knobs and plated fumature. The store door locks to be of the best quality usually used for stores. All the closets to have best spring and tumbler locks, and suitable bolts and hooks. All the vault doors to have best stock locks, with brass bolts and keys. Best 2-inch axle pulleys to be used to all the box frames. The sashes to the box frames to be hung with round weights and best Russia sash cords. The sliding doors to have brass railways and 6-in. sheaves; mortise locks and flush bolts where necessary. All the bolts and other fastenings usual to the doors and shutters to be of the best quality and most approved kinds. Best quality front door lock, with stop to knob and night key, plated knobs (and largest class fumature.)

Plumber's work.—One reservoir, 10 feet long, 4.6 wide, and 3 feet deep, to be lined with lead, (3 lbs. to the superficial foot,) to be placed up to the ceiling of the fourth story of the warehouse immediately over the ladies' water-closet, with a waste-pipe of such dimensions as will insure it from an overflow. One other reservoir, 8 feet long, 4.6 wide, and three feet deep, to be lined with lead as before described, and provided with a suitable waste-pipe to prevent an overflow; from this reservoir the water is to be conducted into the kitchen with an ½-inch lead pipe, with a brass cock in the kitchen, third, fourth, and fifth stories, and to each a plain receiver or sink, with waste-pipes attached, conducting the water into the area under the skylight; the receivers to be lined with lead same as the reservoirs, to be 2 ft. long, 1.3 broad, and 4 in. deep; the sink or reservoir in the kitchen to be 3 ft. long, 2 feet broad, and 6 in. deep.

Four water-closets, to be fitted up in the fourth story of the warehouse, in the most approved style, with self-acting seats; the soil-pipe to be of lead, 5 in. diameter, to pass from the ladies' closet down the southwest angle of the warehouse until it reaches the level of the brick wall which connects the privies in the back yard with the warehouse, to pass along said wall over to the said privies, to pass down the southwest angle of the privies low enough to pass under the seats, and along the seats at an easy and safe inclination, to the northwest angle of the privies, and from thence down to the box below; lead funnel connections to be made from the four seats in the second-story privy to the soil-pipe. A slop closet to be constructed adjoining the ladies' water-closet, and connected in the best manner with the soil-pipe.

Bell-hanging.—Forty-two bells, to be secret, hung in zinc or copper tubes, the cranks to be so adjusted as to produce the *best* possible friction or strain on the wires. The pulls in the several stories to correspond with the style of fumature to door locks in the several stories. All the bells to be arranged upon a neat board fastened to the wall in the kitchen, and designated by painted numbers on or under each bell.

One speaking-tube, secreted within the plastering, to communicate between the dining-room and the kitchen, the tube to be made of tin of $\frac{3}{4}$ in. bore, with German silver or block tin mouth-pieces at each end.

Tin-work.—All that portion of warehouse roof extending westward beyond the west line of the corner house to be covered with the best quality roofing tin, put on with upright grooves, and fastened securely to the sheathing. The roof to the gentlemen's water-closet, and that portion of the roof covering the back stairs at the skylight, to be covered with the same description of tin. The framed wall of warehouse running above the tin roof to be covered with the same quality of tin, put on with flat joints. The back gutters to the eaves to be of the No. 1 class of tin gutters, made in the usual way, the pipes to be conducted to the reservoirs, and waste pipes of a corresponding size to lead the waste water from each reservoir down to the yard.

Carpenter's work.—The joisting throughout the building to be of North Carolina timber, those of 1st and second floors of the warehouse to be 3 x 12, placed 14 inches from centres; the first floor of the corner house to be $2\frac{1}{2}$ x 12, placed 14 inches from centres; all the rest to be $2\frac{1}{2}$ x 12, placed 15 inches from centres; the ceiling joists to be $2\frac{1}{2}$ x 6 in. of N. C., placed 15 inches from centres; double joists pinned together to be placed under all plastered partitions which run parallel with the joists. All trimmers to be of double joist pinned together; the sleepers under the floors of the basement to be of 2 x 4 N. C., placed 20 in. apart. One row of double street bridging to be put to all the floors of joists, except that portion west of the division wall between the turn of the corner house and the skylight, which portion, the joists being long and partitions across do., will require 2 rows.

The rafters to be 8 inches at the bottom, 5 inches at the top, and 3 inches thick, placed 20 inches from centres, secured by 2 x 4 tie and raising plates, all of N. C. The rafters for the tin roof over the warehouse to be of N. C., 3 x 4, and braced to the joists; the back wall of the fifth story over the warehouse to be framed of N. C., the studs to be 3 x 6, the posts 8 x 6, the braces 6 x 6, the girder 7 x 12, and plate 6 x 6, to be framed, braced, strapped and bolted, upon the same principle as a principal rafter. All the sheathing to be of sound, well seasoned, $\frac{4}{4}$ common white pine culls, laid in close joints. All the flooring to be of well seasoned $\frac{5}{4}$ mill-dressed N. C.; the basement to be all heart, the balance to be of a good merchantable quality, selecting the best for the boarding-house floors. All the partitions to be of $\frac{3}{4}$ Eastern Shore, or of hemlock, placed 16 in. from centres, and in all cases, where necessary for strength, to be framed and braced. All the wood lintels to be proportioned to the size of the openings, and none less than 4 inches thick, except over the windows, 2 lights wide; the lintels over the main entrance and

side light windows to be of N. C. equal to the thickness of the walls.

Basement.—The walls and ceilings to the store-room to be ceiled with white pine $\frac{4}{4}$ thick, ripped, dressed, tongue and grooved, and beaded, to be nailed on the walls; N. C. strips $\frac{5}{4}$ thick, and 3 inches wide, nailed into plugs, and placed 2 ft. from centres; the windows in the front to be 3 ft. $4\frac{1}{4}$ wide, and 4.6 in. high in the clear; frames, made of $2\frac{1}{2}$ x 6 N. C. or white pine, with sash and shutter rabbets; the sash to be $\frac{6}{4}$ thick, made in two folds, slights each fold, hinged with $2\frac{1}{2}$ slip butts, and fastened with 6 in. square bolts; the shutters to be of $\frac{6}{4}$ white pine, made square on the inside, and beaded and flushed on the outside, hinged with Plant's best self-acting hinge, and fastened with a 6 in. sill-bolt, and a middle slip bolt to each window. The jambs to be of $\frac{4}{4}$ white pine splayed, $\frac{6}{4}$ nosed seats. The door-frames to be made of $2\frac{1}{2}$ x 8 N. C., with $\frac{4}{4}$ splayed jambs. The door to the corner house to be 4.0 x 6.8, made in two folds, two thickness, with sash and portable shutters, made and fastened with the usual screw and stubb bolts. The door in he west room to be made in two divisions, each 2.8 x 6.8, made in close bead and flush pannels of $\frac{6}{4}$ white pine, and fastened with top and bottom wrought-iron bolts, 10 in. long. A passage to one of these doors partitioned off with $\frac{5}{4}$ flooring boards 10 ft. long and 4 ft. wide, for the use of the small store, with a strong step-ladder from do., and a suitable trap-door in the store floor. The outside kitchen to be 3.0 x 6.8 of $\frac{6}{4}$ white pine, single moulded, frame made as before described. Two neat flight of stairs, with mahogany rail, turned oak ballusters, and oak newels, to communicate, as per plan, with the main store. The openings shown on the plan of the kitchen in the division walls to be cased with $\frac{4}{4}$ beaded casings. The two openings leading into the space under the skylight to have $\frac{8}{4}$ framed and sash doors without shutters, to be 2.10 x 6.8 in the rabbet. A plain and substantial stairs, as per plan, to commence on the kitchen floor, and to continue up through the several stories, as shown on the plan, to the fifth story, cherry hand-rail, plain ballusters, and turned newels whenever necessary, $\frac{5}{4}$ y. pine steps, $\frac{4}{4}$ risers and plain mitred string.

A dumb waiter, to be formed of $\frac{5}{4}$ tongued and grooved boards, put up vertically, to be 3.6 x 3.6 in the clear, and to extend from the kitchen up to the fifth story of the building; the sides of the boarding next to the rooms to be stripped, and lathed and plastered, communicating doors to be made to each story, and in the fifth story the boarding to terminate 2 ft. 6 in. above the floor, and enclosed at the top with a $\frac{5}{4}$ folding battened door. The sliding frame to be made of iron with a portable wooden tray to fit on do., and worked with judiciously arranged sheaves, cords, and cranks, put up complete.

A neat and substantial kitchen dresser 8 feet long, the main

shelf to be 2½ feet wide, ⅝ thick, of merch. white pine, and placed 2 ft. 8 in. above the floor, the space under the main shelf to be formed into two closets, with panel doors to each; the space above to be divided by two shelves 1 foot wide. The washboards to be confined to the kitchens to be 6 in. wide, square edged, put up after the plastering. The doors and windows to be trimmed with a 3-inch band moulding.

First Story.—The south store fronts to be made according to the plan, of the best material and workmanship; the girders to be of cast-iron, and supported by cast-iron columns, as described under the head of iron-work; the doors to be of two thicknesses of ⅝ merch't white pine with moulded portable shutters, and provided with best quality brass screw-bolts, iron lifts and stubb bolts 10 in. square bolts at the bottom, and spring and chain store-door bolts at the top; the sash frames to be made of 2½ N. C. free from pitch, to be secured with ⅝ moulded panel shutters as described for the doors, to be trimmed with pilasters and cornice as shown on the plan; the inside to be neatly cased with the usual bedded casings, fatias and panelled soffeits, and enclosed on the inside with ⅝ sash doors, and divided into moderate size panes of glass, hinged and fastened with buttons, the usual bottom show-shelf to be put in each window. The east store front to have plain cast-iron posts and girders, with double cast store doors and shutters, put up as is usual to granite fronts; two doors on the alley communicating with the stores, to be 4.0 x 8.6 in the rabbets; frames to be of 2½ N. C., and the doors to be made as described for the other store doors; one door to communicate with the kitchen stairs from the alley, to be 2.10 x 8.6 including the transom; the frame to be of 2½ N. C.; the door to be in 4 panels, bead, andflush; one window, 12 light 8 x 10, to light the space under the skylight; the frame to be solid, with sliding sash made in two flight. The floor under the skylight to stand clear of the brick wall at least 6 inches, and to be boarded up with all heart N. C. ⅝ board, dressed, tongued and grooved, secured at the top by a ¾ N. C. plate grooved to receive the boarding. The skylight sash to be framed of 2½ N. C. divided as per plan, with bars one inch thick, with channels cut in the rabbet bed, thus, , to extend from the stairway on the north to the return back wall of the front building, forming a valley at the turn with a tongued and grooved joint, well painted with white lead; the sash to decline two feet, and secured in a substantial manner at the top and bottom to prevent leaking. The walls at the skylight to be secured and supported by cast-iron girder and columns as described under the head of iron works. The wash-boards to be 7 in. wide, of ¼ selects, put up after the plastering, the trimmings to be a plain architrave. The partition dividing off the small west store to be of ⅝ y. pine,

dressed both sides, and tongued and grooved and beaded, put after the plastering.

Second Story.—The front windows to be 15 light, 12 x 20 sash, double box frames of $\frac{6}{4}$ white pine, with the usual boxings for weights and for the sliding of the sash above the frames; the back windows to be 12 light, 12 x 20, double box; the windows to have $\frac{8}{4}$ mortise blinds complete, to be trimmed with splayed jambs, opened face $\frac{6}{4}$ pilasters, 8 in. wide, with moulded caps, plain baus, frieze and cornice, with broken bed moulds; the dining-room windows to have $\frac{6}{4}$ seats and open aprons; three sets of sliding doors, made and arranged with two divisions to slide and two swing on hinges, to be made as broad as the width of the room will allow, and of the same height as the windows; the doors to be $\frac{5}{4}$ thick, each fold divided into four panels, double moulded with handsome Grecian mouldings, the trimmings to be same as described for the windows. The other doors to average 7.4 x 3.2, made in four panels, $\frac{8}{4}$ thick, double moulded and trimmed as before described; the jambs to be $\frac{8}{4}$ white pine in the stud partitions, and opened in the brick partitions. The front entrance to be a recessed doorway, finished in the same style as that of Mr. Lawrence's, on E street. The inside steps at the front entrance to be of best N. C., free from pitch, $1\frac{1}{2}$ thick rise, of $\frac{5}{4}$ yellow pine, to extend across the passage, and so arranged as to project as little as possible below the store ceiling. A handsome staircase, as per plan, to commence on this floor and to continue up to the fifth story, the steps and risers to be of the best quality $\frac{5}{4}$ N. C.; open scroll brackets, ornamented fatias; oval mahogany hand-rail; turned and moulded oak balusters; moulded open-faced skirting, and the walls around the windows studded out with $\frac{3}{4}$ studs to a cornicincular form; the spand-rail to be single moulded, panelled, and a closet formed under the first flight of steps, and the windows to have a sash-door to do., 6.10 x 2.10, with a tramer over do., as large as can be used to look well. The closets at the end of the dining-room to have panel doors, $\frac{6}{4}$, single moulded, and made in folds, to be shelved in the usual way, arranged from 16 in. to 12 in. apart, starting from the bottom shelf, $\frac{6}{4}$ thick and 18 in. wide, placed 3 feet above the floor. A suitable hinged sash to be put each closet, secured by a gauze wire covering. All the mantels required in this story besides the marble ones specified, to be of a neat marble pattern, made of clear, well seasoned white pine. The washboards to be 12 inches wide, including the moulding, opened on the top edge two inches, and the moulding two inches, and put up to grounds. The carpet-sills and hearth-borders to be of mahogany, of the usual width. Three windows to Miss Dermott's rooms, to have inside shutters in five folds, cut in three pieces; the wall to be studded to suit do.

Third Story.—The windows to be 12 x 18, double box, 12 light, except those in the small rooms over the dining-room, which are

to be 8 light, 10 x 18, made as before described, with blinds complete. The doors to be 7.2 x 3.0, double moulded, $\frac{8}{4}$ thick, made in four panels; the jambs same as described for the second story; the trimmings of this story to be a 7 in. plain pilaster, $\frac{4}{4}$ thick, moulded caps, plain bars, frieze and denstaled crown mouldings. The windows to have splayed $\frac{4}{4}$ jambs, $\frac{6}{4}$ moulded edge seats, and plain aprons; one set of sliding and folding-doors made as before described, and one set of folding-doors to be made the full width of the room, allowing for strong jambs, to which the doors are to be hinged, to be made in four folds, hinged together with 3 hinges, 4 x 4, in the most substantial manner. All the doors in the back rooms to have transoms over do., 15 in. high, hung on pivots of hard wood. The mantels of this story to be made as described for the second story. The carpet-sills and hearth-borders to be of cherry; the washboards to be 11 inches wide, including the moulding.

Fourth Story.—The windows to be 12 lights, 12 x 16, made as before described; the small back windows to be 8 lights, 10 x 16. The doors to be 3 x 7, double moulded, with plain jambs, as before described; the windows to have splayed $\frac{4}{4}$ jambs, $\frac{6}{4}$ moulded seats, and plain aprons; the doors over the back rooms to have transoms, as before described. The trimming of this story to be a beaded casing, 6 in. wide, frieze and neat crown moulding. The mantels to be of wood, of a neat, plain marble pattern. The washboards to be 10 in. wide, moulded edge. The carpet-sills and hearth-borders to be of pine.

Fifth Story.—The windows to be 12 light, 12 x 12, made as before described, the small windows on the back to be 8 light, 10 x 12; the doors to be same as described for the fourth story; the washboards the same as fourth story; carpet-sills and hearth-borders of pine. A reservoir to be made of $\frac{8}{4}$ white pine 8 feet wide, 4.6 wide, and 3 feet deep, to be elevated up to the ceiling, to be secured by stanchuns and flooring joist, with the usual strap and iron bolts at the angles and through the centres.

Warehouse.

The cellar doors in the front to be 4.0 x 6.8 frames, made of $2\frac{1}{2}$ N. C., the doors $\frac{5}{4}$ N. C., dressed, tongued and grooved and beaded, hinged with two fort straps and stock-locks with brass works. Two solid windows, 12 lights, 10 x 12; two do. in the back 3.4 x 3.6, with $\frac{7}{8}$ round iron bars 6 in. from centres, the sash to do. to be made in two folds, and hinged with slip-butts and fastened with 4 in. tow-bolts. One flight of strong rough steps of $\frac{8}{4}$ y. pine to communicate with the store above.

First Story.—The store front to be of cast-iron, as described for the east store front, to the corner store, with sash doors made in the same manner. One door on the alley and one on the back, 4.6 x

9.0 ft., made same as the other store doors, the frames to be of 2½ N. C., with the customary fastenings for store doors. Three windows, double box frames, 12 lights, 12 x 16 sash, with shutters, made, hinged, and fastened as described for the basement stores. A strong rough stairs to extend up to the fourth story; the steps to be of ⅝ N. C., with ¼ risers, dressed, and to run up in straight flights to each story; the first story steps to be 4 feet long; the second 3 ft. 3 long, and the third 3 ft. long, to have square newels and pine rails; the first flight to be boarded up underneath, with a buttoned door in do. leading to the cellar; two trap-doors to be formed in each of the floors framed, 5.0 x 5.0, with double joist trimmers; the doors to be framed of the flooring and hinged with strong T hinges. Corresponding well holes for stairs to be framed in each story south of the range of columns, and to be floored over; in case the warehouse should hereafter be divided into two stores, the well holes would be made for the stairs.

Second Story. The three windows in the front to correspond with the windows in the corner house, but no inside jambs or trimmings. Five windows, 12 lights 12 x 16 sash, double box frames, but no inside finish; to have shutters same as first story. Every third joist of this floor to be long enough to pass through the south wall, to form a galley floor to extend from the corner house to the second story of gentlemen's water-closet, to be framed into a joist at the ends, so as to leave the floor 2 ft. 10 in. clear of the blinds. Two rows of 5 x 4 N. C. scantling to be let into the joist to nail the floor to, which is to be of all heart N. C. ⅝ thick joists, painted with a white lead, and the same description of galley floor to extend along the front of the closets, so that each may be entered from the galley. The entire length of the galley to be protected by slat-work left high; the frame to be made of 2½ N. C., consisting of posts 2½ x 4 in., placed 4 or 4½ feet apart, as may be found most convenient, on the top of which to be framed 2½ x 4 in., and a bottom rail 6 in. from the floor, 9 in. wide, of 2½ N. C., the spaces to be filled in with slats ⅞ thick edges, rounded and cut into the posts; the top of each part to have a stay by 2½ x 4½ N. C. strips let into the brick wall and wedged tight.

Third Story.—The three front windows to correspond with those in the corner house, except no inside finish; five back windows, 12 lights, 12 x 18 sash, double box, without shutters, blinds, or inside finish.

Fourth Story.—The three front windows to correspond with those in the corner house, except no inside finish; five back windows, 12 lights, 12 x 16 sash, double box, without blinds, or inside finish. The passage to the ladies' closets to be of ⅝ N. C., dressed, tongued and grooved, and beaded; four closets divided off as per plan, with ⅝ boards dressed both sides, and tongued and grooved, and a slop closet, each to have a panel door 6.6 x 2.4,

hinged with 2½ butts, and fastened with a tour bolt 5 in. long; the seats of the closet to be made in the best manner, fitted to the plumber's work in a neat and substantial manner; the closets to be fitted with skirting and every other finish necessary for plastered walls; each closet to have a window of 3 lights of 10 x 12 glass, the frames to be of ⅝ white pine, with 3-in. N. C. sills; a door to the passage to correspond with the fourth story doors in the corner house; the small windows to the water-closets to have stationary blinds.

Fifth Story.—Extends westward as far as the west line of the corner house; the centre passage from the corner house to be extended through the warehouse and the space divided into four rooms, with 6 windows of the same size and finish as there is in the corner house; the washboards the same; the door to each room same as described for the corner house.

Miscellanies.

The tin roof over the warehouse to be covered with rough ⅝ N. C. boards, put 2 in. apart and nailed to 1½ x 3 in. N. C. strips placed 2 feet apart; fifteen posts 5 x 5, dressed and *cornive* of N. C., to be firmly fastened to the roof for clothes-posts, each to have a round pin put through the post to fasten the line to, the posts to be 7 feet out of the roof; a platform to extend from the back door in the fifth story to the roof over the back part of the warehouse, to be made in a most substantial manner of N. C. joist and flooring, to be secured by strong rails and newels; the door which communicates with the platform to be 4 feet wide, made in two folds and same height as the other doors, the frame to be made of 2½ N. C. revealed, rabbeted, and beaded; the sills be of 4-inch North Carolina.

The roof over the front of the warehouse and the return west end of the corner house to be sustained at the crown by a trussed gallows framing, starting from the raising floor of joists and up high enough to rest the top of the rafters on the top plate of the gallows; the top and bottom plates to be 3 x 12, and the posts and braces to be 3 x 8, all of N. C., framed and strapped in a substantial manner; the front balcony extending from the west line of the building across the south front and along the east front, so as to enclose the window next to the main entrance to be 3 ft. 6 in. wide, making as near as may be 98½ ft. lineal of balcony floor, and 112½ feet lineal of iron railing to do.; the flooring to be all heart ⅝ N. C., laid in beaded joints on 3 x 4 all heart N. C. rails, of 3 ranges, supported by plain wrought-iron beams, 19 in all, including the angular one, to be 2¼ x 1 in., and to run through the wall and fasten firmly to the joists on the inside; the under side of the floor to be neatly ceiled with ¼ white pine, dressed, tongued and grooved, and beaded; snow-finders to be put to all the eves where the roof

is slated; those on the front to be 7 in. wide, and the back 5 in. wide, of $\frac{8}{4}$ white pine, sustained by the usual wrought-irons; corner beads to be put to all exposed plastered corners; all the joists of the warehouse exposed to view to have the lower edge faced and the sharp corner taken off.

Privies in the back yard, both stories, divided by $\frac{5}{4}$ dressed, tongued and grooved, board partitions; the seats and risers to be of $\frac{6}{4}$ white pine; those in the second story to have margin casings and hinged flaps; skirting to be put to such walls as are to be plastered; the soil-pipe being brought down in the corner of the south end is to be covered by dressed casings; the floors to be of all heart N. C. $\frac{5}{4}$ mill dressed, laid on N. C. joists $2\frac{1}{2}$ x 8; the partitions in the second story will be one foot short of the ceiling and capped; a window of 8 light 9 x 12 glass to be put into the south division, second story, made in two flights to slide in the usual way, and a stationary blind on the outside; the doors to be 2.4 x 6.8, $\frac{5}{4}$ thick, made with bottom panels, the space above the bottom panels to be mortised slats, and hinged and fastened in the usual way; the boxes for the privies to be made of $\frac{6}{4}$ merchant white pine, free from splits or sap, dressed on the inside, and on the front to form the riser; to be dovetailed at the angles and put together at the joints with white lead; to be two feet wide on the outside, two feet deep, and in length equal to the dimension of the divisions; these boxes are to set upon brickwork laid in cement, equal in breadth to the width of the *boes*, and so graded as that by having two courses of brick above the floor on each side the top of the seats may not be more than 18 inches above the flooring; the brick floor under the boxes is to be formed with a curve or dish grouted with cement, and made to decline to the south and discharge itself into the drain before described; the box which receives the discharges from the soil-pipe to have the top edge of the *eelr* curved out so as allow the water to run off into the drain below, 4 inches under the seat; the roof to be $\frac{8}{4}$ culls, 6 in. at the eave and 15 in. at the top, placed 2 feet apart, close sheathed for tin.

The 1st story door frames to be made of $\frac{8}{4}$ white pine, with granite sills and $\frac{4}{4}$ battoned doors, each door to have a 4-in. dead lock in the south division first story, to have a 4-light window 9 x 12, with blinds on the outside and the sash hinged in the inside; the doors and windows of both stories to be trimmed with a 3-inch band-moulding, put up after the plastering; the seats of the first story to be made portable, so that the boxes can be cleaned out from the inside; five gates to be made for the alley fence wall, to be 3.4 in. in the clear and 7 feet high; the frames to be made of $2\frac{1}{2}$ N. C., to rest at the bottom on N. Y. stone blocks worked into the wall and secured by iron dowels and wall irons; the two inner jambs of the gate to be separated by an 18-inch pier, to which they are to be confined by two $\frac{3}{4}$-in. bolts and nuts; the gates to be made

of $\frac{5}{4}$ N. C. dressed, &c., with two battens and braces, hinged with 22 in. straps, with hooks made with plates and screwed to the jambs; one of the doors to have a stock lock with brass works; the other door leading to the privies to have a spring lock, constructed as to bolt itself when closed, and opened only by the keys of the privies.

The fence dividing the yard of the warehouse from the privies to be 6 feet high, boarded with good $\frac{4}{4}$ culls, tongued and grooved; the posts to be sawed to 3 x 5 inch, rough beaded fatia, and bare board to be put on each side of the boarding with wrought nails, the heads to be let into the posts. A cap to be put to fence of $\frac{8}{4}$ culls, jointed edges and bevelled top.

A girder of N. C., 5.6, dressed, to be put under the second and third floors of joists in the warehouse, on top of the iron columns, and to extend from the front to the rear of the building. The three doors to outside vaults to be of $\frac{5}{4}$ N. C., battened, dressed, tongued and grooved, &c., hung with strap-hinges, and a good 6-inch stock lock, with brass works, to each door. The frames to be of N. C., $2\frac{1}{2}$ x 7 inch, made 2.8 x 5.0 in the clear. The doors from the kitchen into the vault under the alley to be 2.8 x 5.10 square, worked $\frac{6}{4}$ thick, hinged and locked as before described; the jambs to be of $\frac{8}{4}$ white pine. The door inside of the vault leading into the cellar to be a battened door, with frame, hinges, and lock complete.

A skylight to be constructed over the main stair-case, according to the plan; to be framed with double outside rafters and 4 x 6 N. C. trimmers. The space from the rafters to the ceiling to be splayed upon each side and plastered. The sash to be made as described for the other skylights; the two ends to be made of perpendicular sash. Seven closets to be put up in the recesses of the chimneys, in the usual way, with doors to correspond with them in the rooms.

Plastering.—The fifth story of the warehouse, the passage to and the ladies' water-closets, the entire corner building, except the basement stories, the ceiling over the alley, and the gentlemen's water-closets, to be plastered in the best manner, in three coats, hard finish. The second and third stories to be set with calcined plaster, the balance finished with lime and fine white sand; wood beads to have quirks cut to do. The plastering to the privies to be floated up with the white coat and sand to give them a rough hard surface. The mortar to be composed of well-slacked and strained wood-burnt Potomac lime, sharp sand, and hair, in just proportions, warranted not to blister. The laths to be best quality, nailed on sufficiently far apart to insure a good key.

Painting and glazing.—The store fronts and the second and third story doors to be painted in the best manner in oil imitation of oak or maple. All the blinds to be painted 3 coats verdigris

green. All the wood work usual to be painted. Both outside and inside to have 3 coats plain colors. The moulded washboards to be painted in two colors. All the wood mantels to be painted black and varnished. All the iron railings and gratings to be painted two coats black. The oak ballusters and hand-railing to be varnished three coats. The gallery and balcony floor to be oiled two coats. The brick cornice and frieze to the south and east fronts to be painted four coats plain white.

The glass for all the store fronts (except the inside glass to the show-windows) and skylights to be double thick, best quality cylinder glass. All the other glass to be No. 1 cylinder, free from stains, clouds, and blisters; to be glazed in the best manner, and the front sashes to be traced with black. The iron work to the store fronts and the iron columns to be painted of such colors as Miss Dermott may select.

Slating.—Foundation slate to be in all the walls whenever necessary, to prevent the damp affecting the plaster.

All the roof, except that portion described to be tin, to be covered in the best manner with best Susquehanna gauged slate, put on with copper nails.

All the flashings to the chimneys, valley gutters in the roof and behind the chimneys, flashings around each of the skylights, and the gutter on the south side of the skylight over stairway, to be made of copper, and put on in the most effectual manner.

In witness that the within specifications constitute the schedule (A) referred to in our articles of agreement of this date we hereto subscribe our names this 22d April, A. D. 1857.

ZEPHANIAH JONES,
ANN R. DERMOTT.

Witness:
WALTER JONES,
JOHN C. HARKNESS.

Writ of Error produced.

And whereas afterwards, to wit, on the thirtieth day November, in the year eighteen hundred and fifty-seven, the said defendant, by her attorney aforesaid, produced and filed in court here the United States writ for the correcting of errors, of and upon the judgment aforesaid, directed to the judges of the circuit court of the District of Columbia for the county of Washington; and in pursuance thereof, and according to the form and effect of the law in such case made and provided, a transcript of the record of proceedings of the judgment aforesaid, and all things thereunto relating, with the writ of error aforesaid, and a copy of the appeal bond hereunto annexed, is hereby transmitted to the said Supreme Court accordingly.